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**Residential Property Investment:  
Is Regulatory Change Necessary**

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**Abstract**

Residential property investment has been incorporated into investment portfolio's and retirement plans of many Australians with increasing momentum over the past 10 years. The role of real estate agents in the marketing and sale of new residential property and the legislation governing real estate agents is now under review by both State and Commonwealth Governments. As the roles of real estate agents and investment advisers / financial planners begin to blur, the introduction of appropriate legislation governing these participants along with unlicensed marketers and seminar operators needs to be introduced.

A conceptual framework has been adopted to identify the key area of the divide of independence that needs to exist between investor and marketer, be they agent, financial planner or adviser, with commentary highlighting areas of concern. The evolution and status of both State (NSW) and Commonwealth regulation governing agents and advisers / planners has been considered, with perceived concerns and gaps discussed. In conclusion, an analysis of the complaints lodged with both state and commonwealth agencies, has been reviewed, with recommendations made to address the issues raised, which are currently not dealt with, or adequately dealt with under existing regulatory provisions.

## **Introduction**

Property development is a business subject to a variety of risks and changes in market circumstances that may impact on the degree of success or failure of a development. Establishing a degree of certainty and stability in the likely success of a residential development is best evident in the sale of the finished product at or above the anticipated gross realisation for the development. This does not diminish the importance of ensuring the development is completed on time and within budget, however the final stage of a development, the marketing and disposal stage, is usually the most distant part when the development is in the planning stage.

It is not uncommon for parties financing the development project to take a position of minimising their own risk in the event of the development being unsuccessful, or less successful than anticipated at the outset of the project. In addition to the provision of collateral and other safeguards to protect their interests, it is usual for financiers to seek pre commitment or pre sales of property in the development, as an added measure of protection and evidence of demand for the finished product at the anticipated sale price. In some circumstances, pre sales of up to fifty percent of the gross realisation are required in order for a developer to negotiate finance on more favourable terms and conditions. It is the selling phase of the development that is the subject of this paper.

The relationship between the parties selling property and purchasers and the methods of sale used through property investment seminars has drawn the attention of the Australian Securities Investment Commission (ASIC), who are questioning these methods, the qualifications of the parties and the regulations governing them. The points under examination are the existing level of regulation of agents in NSW and a comparison between state regulation and Commonwealths financial services reforms under Chapter 7 of the Corporations Act 2001, which governs investment advisers. It is argued in this paper, that both the NSW framework and recently introduced Commonwealth reforms fails the residential property investor as:

- 1) Each framework does not define the role of an agent or adviser or adequately protect the consumer, namely the investor.**
- 2) There are no provisions in either framework for protection of the investor in determining that the price at which a property is being recommended to an investor is at market value.**

## **Conceptual Framework & Overview**

The conceptual framework model articulates the relationships between the parties in the sale / purchase of the property. The model highlights particular relevant issues, however one particular item for identification is the ‘**divide of independence**’. This particular point, in part addresses one of the contributory factors that has led to the review of property advising activities. In essence, it is the absence of the divide of independence that is of concern. In the consideration of whether the regulation of property investment advising is necessary, the creation of the divide of independence is a particular issue to be considered. The second issue is the education of property investors / purchasers, to distinguish between who has a fiduciary responsibility towards them when providing information about residential property investment.

## **Model Critique**

The developer engages a mix of both in-house marketers, financial planners and licensed agents to sell their property on completion and in some cases, off the plan. In the states of Queensland and Victoria, some property is aggressively marketed interstate at a different (higher) price to the local market. This is known as the two-tier market system. In some circumstances, the developer has in-house financiers and solicitors / conveyancers, which the purchaser is compelled to use. In other circumstances, the developer refers the purchaser to a panel of these professionals, who are promoted as being independent of the developer.

In each case, the in house marketer, financial planner and agent are engaged and remunerated by the developer, they have no fiduciary obligation to the purchaser. In each case, these parties act to sell property to the purchaser, using a variety of methods which include selling the merits of negative gearing, projected capital gains and the benefits of depreciation allowances. In some circumstances, valuations are provided by the developer, with some developers not permitting independent valuations to be undertaken by purchasers prior to purchase.

The divide of independence in the model demonstrates the importance of purchasers engaging and paying professionals independent of the developer and their agents. The risks for the developer with the purchaser obtaining independent advice are:

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- 1) The advice provided by the independent professional may be, that the property is not suitable for a number of reasons.
- 2) The asking / selling price is too high.
- 3) In the event of money paid by prospective purchasers for advice in relation to 1) & 2) above, the advice may lead the purchaser to not purchasing the property or not purchasing the property at the asking price, which may lead to the property not being sold to them.

The merits of an informed investor may mean the investor is unable to purchase the property as less informed investors may proceed to purchase the property at a higher price. A further issue of concern to the prospective purchaser seeking independent advice, is that the advice being paid for is not seen by them as assisting them, as it has not lead them to achieve their goal of purchasing a particular property.

The second point of concern is that some prospective investors innately feel satisfied that the process they have undertaken in speaking to the selling agent, planner or marketer meets their understanding or interpretation of due diligence investigation in the purchase process. Their level of understanding the process of developing independent reliable advice is less evolved or non existent compared to more experienced property investors, therefore the merits of the divide of independence in the investment / purchase process does not exist or is unknown to them.

### **The Issues**

In a major consumer awareness program by the Queensland Government, the introduction of warnings to all property purchasers to seek independent legal and independent valuation advice prior to purchasing property have been integrated into the property purchasing process. “For the first time in Australia, a State Government is formally advising investors to obtain an independent valuation to protect their interests, before signing a contract of sale. Reputable valuers are now the ace in the hand of the Queensland Government in combating practices that have dealt cruel financial blows to thousands of “Mum and Dad” investors throughout Australia. Herriot (2001)

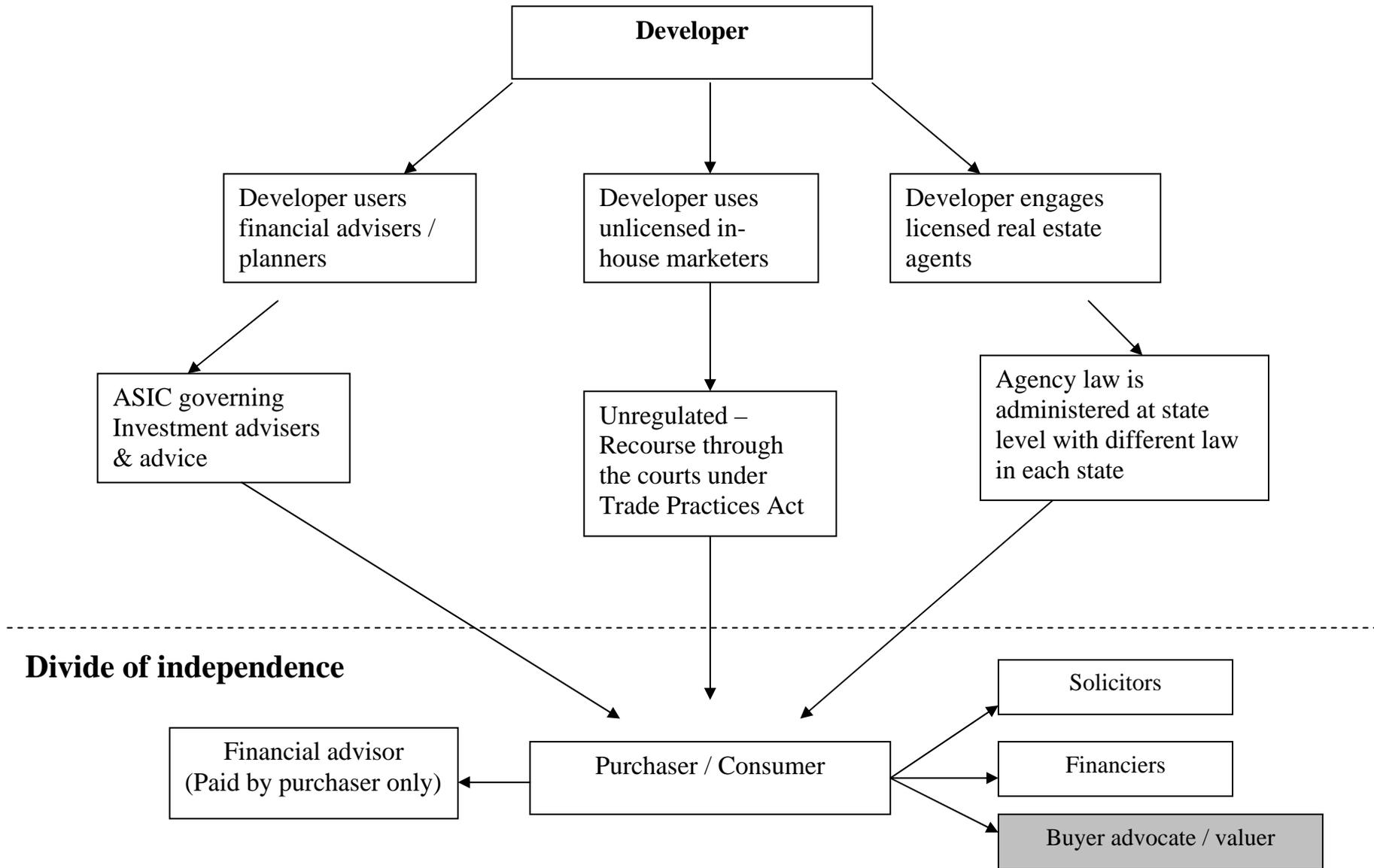
## Residential Property Investment – Is Regulatory Change Necessary?

The importance of a well informed investor is paramount to sound property investment. This was established by McDonald (1999) in a survey of 41 valuers on the Queensland Gold Coast. Among the main findings of the survey were:

- 85% of valuers believed that the investor market to be very significant scale of one to five.
- More than 70% of investors are made up of overseas, interstate or intrastate buyers.
- 90% of respondents to the survey indicated that 90% of non local buyers paid slightly or significantly more than market value.
- 32% of respondents indicated that the non local buyer paid more than market value by 25% or more,
- 5% claimed that non local buyers paid more than market value by 50%.

Chart 1

**CONCEPTUAL MODEL – NEW DEVELOPMENT**



## **Property – The Evolution of Regulation**

Property services which encompass the leasing, management, marketing and sale of property have traditionally been regulated by state governments across Australia. The sole governance and scrutiny of property agency and related services drew the attention of the Commonwealth Government after the Financial Services Inquiry of 1997. The ASIC undertook a review of agent's activities to determine if they provided investment advice in undertaking their role in marketing property.

The existing regulation of real estate agents should be reviewed. Real estate agents providing investment advice should be required to hold a financial advisors licence unless the review clearly establishes the adequacy of existing regulation" (Australian Securities Investment Commission 1999:7)

### **Existing State Regime in NSW**

Since the introduction of the Property Stock and Business Agents Act in 1941 in New South Wales, this legislation has been adjusted and reviewed in a piecemeal approach. In 2002, this Act was significantly redrafted and expanded, with wholesale changes to address issues raised by the ASIC.

Amongst the key issues addressed and reforms instigated under the review were:

- 1) A regulatory framework for conducting the sale of property by auction.
- 2) Requirements for agents to provide accurate estimates of value to vendors selling property and also buyers purchasing property.
- 3) Cooling off periods for the signing of agency agreements.
- 4) Significant strengthening of consumer protection in the transaction of property.
- 5) Agents providing general investment advice when selling property must indicate that it is general advice and not tailored to the needs of the person S46.

(Property Stock & Business Agents Act 2002)

Reforms of the regulation of property sales and the recognition of protection for purchasers still largely remain unregulated. The amendments to the Property Stock and Business Agents Act 2002 in addressing the obligations of the agent to the purchaser are limited, as the agent acting for the vendor primarily has a fiduciary relationship and obligation to their client, the vendor. This is demonstrated in the following definition of agency:

The relationship that exists between two persons when one, called the agent, is considered in law to represent the other, called the principal, in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship by the making of contracts or the disposition of property. Fridman (cited in Lang 1996:331)

The legislation that governs the relationship between agent and their principal in the marketing and sale of property, cannot impose the same commitment and fiduciary duty to a second party, referred to as a stranger in the above definition. This is particularly the case when an agent is remunerated by their principal. At best, the legislation can define the duties and responsibilities of an agent when providing information and undertaking transactions on behalf of their principal with a purchaser. In addition to the issue of consumer protection for the purchaser, the agent's fiduciary obligation remains the protection of the principal, "An agent performs a service for his principal; he represents him to the outside world; he can acquire rights for his principal and subject his principal to liabilities" Fridman (cited in Lang 1996:331)

A fiduciary relationship is defined as:

"a person who holds a position trust vis a vis another person, such that he/she is obliged not to abuse that trust by making unauthorised profits by virtue of his/her position or allowing self interest to conflict with duty." (CCH 1996:72)

In part, this issue has been addressed, with the Property Stock & Business Agents Act 2002 now identifying and recognising buyers agents, who may be exclusively act for the purchaser in negotiating the property transaction. It is incumbent on the purchaser to engage an agent.

In concert with the agent's role in acting for a vendor in the sale of property, the principal has a duty to indemnify the agent as a part of the agency relationship, Fisher (2000). The scope of agents responsibilities towards purchasers, referred to as the consumer has expanded, with greater care needed and statutory responsibilities to be exercised when acting as agent for a principal. This liability has been extended with the inclusion of the following provisions relating to financial service reforms:

- 1) Section 46 - prohibits the provision of financial or investment advice by real estate agents to sellers or purchasers.
- 2) Section 73 – prohibits false representations made to the buyer regarding the underestimating of the selling price.

### **New Commonwealth Regime**

In contrast to the existing state government's regime in NSW, the frame work that operates at the Commonwealth level seeks to bring the existing state government regime for property professionals under the umbrella of the Commonwealth regime. This is the case where the service provided by the property professional is considered under Chapter 7 of the Corporations Act 2001 to be providing "investment advice" to purchasers in the course of selling property. The key issues identified in defining investment advice are:

- Does the author of the opinion benefit from the decision.
- Are they paid by the consumer for the opinion
- Whether the author has made representations to the consumer that would make it reasonable for the consumer to rely on that opinion or recommendation.
- Whether the author is required by law to act in the interest of the consumer, or has undertaken to do so.
- The authors reputation is likely to influence to consumer in making the decision.

(ASIC 2002:1.2.1-1.2.3)

In the case of a selling agent providing information to a prospective purchaser incorporating one of the above points, the agent maybe deemed to have provided 'financial product advice', particularly where the agent has provided and discusses returns from a property and its capital gains prospects. It may well be argued that the author of an opinion benefits from the purchasers decision in the event of the agent selling the property to the purchaser, notwithstanding that the selling agent is remunerated by the seller. Conversely, in the case of a buyers agent assisting and advising the purchaser, where the buyers agent is remunerated by the client purchasing the property, namely the consumer, the above issues are more pertinent. This is particularly so where the buyers agent provides information in relation to the properties performance and suitability as an investment to a purchaser.

The above issues are further defined by Robinson (2002) who qualifies the context of the influence a property professional may have on a prospective purchaser who is paid by that purchaser for that very service.

The decision influenced may be to:

- Purchase
- Not purchase
- Sell or switch
- Increase /decrease existing interest

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Advice provided by property professionals may include assumptions and predictions:

- Predicting future earnings for an investment
- Advice on negative gearing as an investment
- Valuations to be used as advice to investors for managed investment schemes.
- Recommendations relating to investment acquisitions (Robinson 2002)

The potential implication for property professionals under the financial services framework is difficult to assess at this early stage. Whilst property has not been specifically listed as a financial product under the new regime, the adaptive application and interpretation of the legislation by the ASIC is not known, or yet been tested in the courts. The broad application of the legislation in relation to what may be deemed a ‘financial product’, is highlighted by Baxt et al (2003), who emphasis the design of the legislation to be *flexible and adaptive to deal with on going developments in financial engineering*. This apt description was mirrored in the Financial Systems Inquiry Report (1997), which referred to the former regulatory regime as not offering legal certainty for some financial participants in some areas.

### **Comparative Legislative Framework**

The following legislative comparison shows the contrast between the NSW legislation governing agents and the Commonwealth Corporations Act 2001 which governs investment advisers.

**Table 1**

	<b>Commonwealth Corporations Act</b>	<b>New Sth Wales Property Stock &amp; Business Agents Act</b>
<b>Know your client</b>	X	
<b>Written Instructions Act for one side only</b>	X	X
<b>Fee from one side only</b>		X
<b>Disclosure of fee structure</b>	X	X
<b>Disclosure of soft dollar payments</b>		X
<b>Disclosure of interest in the property</b>		X
<b>Basis for opinions</b>	X	X
<b>Independent valuation advice at purchase</b>		
<b>Investment advice Warning</b>		X
<b>Internal complaints mechanism</b>	X	
<b>Professional Indemnity Insurance</b>		X
<b>Compensation Bond / Fund</b>	X	X

The tasks undertaken by investment advisers in relation to property and the tasks undertaken by real estate agents in marketing property has begun to blur. Investment advisers obtain commissions from developers in the recommendation and sale of property and agents in selling property, incorporate information relating to the property's financial performance. Table 1 highlights differences in the objectives of the NSW and Commonwealth's legislation. A particular cornerstone of the New South Wales legislation, is that it prohibits an agent from acting for both investor / purchaser and seller / developer in the same transaction.

### **Is Change Necessary?**

The ongoing review of any operation is a means of monitoring and updating its relevance to deal with issues that have evolved and are pertinent at the time of review. Whilst significant overhauling of the NSW legislation in relation to agency practise has been undertaken, a key area that has evolved is the provision of information and advice in relation to property investment. This has been overlooked at the state government level of regulation, which is more focused on the regulation of processes rather than information and advice that underpins the decisions incorporated in these processes to achieve a desired outcome.

In the regulation of advice relating to property, states have stagnated, which has allowed the Commonwealth over an eight year period to study define and regulate the general provision of investment advice. This is now beginning to encroach on property related services. An apt analogy of this is "A tortoise on the move can overtake even the fastest hare if that hare stands still" (Nickols 2004:5).

The assessment and review of the property service industry is not immune to change, this is particularly so with the increased incorporation of residential property in many investors portfolios and retirement plans. With the continual steady rise in property values over the past decade in numerous residential sub markets in Australia, the mantra of property investment has lured many new novice property investors into the residential property market. Amongst these investors are self funded retirees.

Notwithstanding the investment in property to be one of the largest investments to be made in a person's life, emphasis may be placed on the importance and quality of investments made by those nearing retirement with a limited capacity to replace capital to be taken into retirement. The introduction of Financial Service Reforms by the Commonwealth represents

a uniformed attempt to regulate the provision of financial services and investment advice in relation to financial products across Australia. The potential for overlap of state and commonwealth legislation shows consistency in some objectives of each level of government and significant inconsistencies and omissions in other objectives.

The focus of change and review of financial services provided in relation to property has not been just for change sake. The evolution of a number of subliminal issues have opened debate about the practises of some property practitioners and the extent of tasks they undertake and their skill base in providing the services they provide. Of particular interest among issues identified for mention include Two Tier Marketing, and purchaser rebates, McDonald (1999). Of greater imperative in attempting to combat these issues, is the disparity in regulation that exist at both Commonwealth and State Government levels.

The state government regime deals with relationship between the parties paying the fee, namely the vendor and or purchaser and their agent. The commonwealth regime provides a framework of protection for the purchaser of property and the relationship that exists between them and their adviser. However, this framework does not preclude the adviser from being remunerated by both the purchaser their client and vendor or developer who's product is being recommended or provided to the purchaser. This relationship is permitted provided a disclosure of fees, benefits or remuneration paid by the owner of the product being recommended, is made to the purchaser who is also being retained by the adviser.

Is this a legitimised conflict of interest, should the client be made aware that they are entitled to ask the adviser for a rebate of their commission or should the Commonwealth framework be amended to prohibit this duality of interest.

**In New South Wales, Section 48 of the Property Stock & Business Agents Act 2002 states:**

**(1) A licensee must not act in his or her capacity as licensee on behalf of both the buyer and seller of land at the same time.**

**No such provision exists under the Commonwealths Corporations Act 2001.**

In August 2003, a working party called the Ministerial Council on Consumer Affairs was formed, comprising the States (excluding Tasmania), the Australian Securities Investment Commission (ASIC) and Australian Competition and Consumer Commission (ACCC). The working party discussion paper identifies among the Term's of Reference to include:

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- Assess the extent and nature of the provision of property investment advice in Australia;
- Assess the adequacy of current State/Territory and Commonwealth regulation;
- Examine whether further regulation of the provision of property investment advice is required; and if so, what form of regulation should take; and
- Examine the options for introducing a new national or state regulatory scheme and the costs and benefits associated with each option. (Ministerial Council on Consumer Affairs Working Party 2004). The discussion paper identifies real estate agents giving general financial advice to potential purchasers of investment properties. The advice identified includes;
  - investment returns
  - capital appreciation and
  - in some cases, negative gearing information

Upon information sought from the committee regarding complaints, it was highlighted that the target of the working party was the area of property investment seminars conducted by real estate agents. The working party is reviewing the role of investment seminars in the property sale process. Information obtained from the working party shows that in 2003, 762 complaints were lodged with state and commonwealth agencies regarding property investment and advice. A break up of property related complaints lodged with state and commonwealth levels of government during 2003 are as follows;

**Table 2**

<b>Govt organisation</b>	<b>Number of Complaints</b>	<b>Compliant Type</b>
QLD	13	5 Marketeering 8 Seminars
NSW	14	All property investments seminars
VIC	70	64 investment seminars with one company
SA	4	All investment seminars same operators as in Vic
WA	1	Property investment seminar
ACT	2	Property investment advice
NT	0	No complaints received
ACCC	308	140 seminars 31 developers and in-house marketers 48 property marketing & 89 other
ASIC	350	Property investment advice, 20% same operator mentioned in Victoria and SA
<b>Total</b>	<b>762</b>	

**Ministerial Council on Consumer Affairs Working Party (2004)**

By far the greatest number of complaints registered, related to property investment seminars. Additional information of the break up by qualifications of those parties conducting the seminars from the working party, was not forthcoming. **What has not been determined from the above information, is if these seminars are being conducted by agents, unlicensed marketers or financial planners.** As was evident in the 1920's and late 1930's, the emergence of the 'go-getter' sparked the request for the property industry to seek protection via regulation of property professionals. Protection was sought to deal with unprofessional and unskilled parties practising within the property profession due to the absence of the recognition of qualifications under regulation, Real Estate Institute NSW (1986).

To date there is no hard evidence that real estate agents are providing tailored financial investment advice in the sale of property. This was recognised by the Ministerial Council on Consumer Affairs Working Party (2004 Pg 15), "the extent to which' apart from general advice, real estate industry representatives are also engaged in providing tailored or personal financial advice is not clear to us"

### **Conclusion / Recommendations**

Property investment advice has become an extension to the property purchasing process, in which some investors seek to identify in earnest the correct path and suitable selection of a residential property investment. This process has been clouded by a number of issues, among which include the self serving of professions and service industries that facilitate the property purchasing / investment process.

In dealing with issues that have been identified, the following measures may be implemented in providing a basis for informed property investment decisions to be made;

- A review of qualifications, experience and knowledge required to advise on the property purchasing, property selection and property investment advising processes, to determine who is best qualified to provide this advice and who also has adequate product knowledge of the investment being recommended.
- A critical review of all state and commonwealth regulation relevant to property and investment advising with a juxtaposed analysis of strengths and weaknesses of each, with a view to creating a more uniformed and consistent regulatory regime if the states remain administrators of property professionals and their qualifications.

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- Suitable statutory redress against unqualified and unregulated parties involved in property related activities.
- Education of property investors in being able to differentiate what constitutes independent property investment advice, the qualifications of the adviser and a clear understanding of who advisers owe a fiduciary obligation too.
- Investment seminars to be registered with a central body, (ASIC) for clearance, with qualifications that the seminar is providing independent information about the investment process and is not aligned or linked to any specific developer, project or investment adviser. And where it is, suitable warnings about the relationship with the seminar provider and public be provided.
- A statutory provision requiring that all investment advisers and agents are able to support the purchase price at which they recommend their client purchase property at.
- In the event that a national regulatory framework is adopted to govern property investment advice or in fact the all functions of the property profession, that such regulation does not create a barrier to trade or restrict existing property professionals through the introduction of educational qualifications and professional accreditations that may already exist for other professions, namely the financial planning industry.

**Appendix - Evolution of Property Regulation in New South Wales**

**Table 3**

<b>Date</b>	<b>Issue</b>	<b>Purpose / Action</b>
1898	NSW Auctioneers Act passed	Governing real estate and general auctioneers
1910	Real Estate Auctioneers & Agents Association formed.	Represent agents & auctioneers.
1912	New Zealand Land Agents Act introduced.	Protect the public & raise status of agents
1915	Draft agents registration recommended by REA & AA	To protect consumers and vet people working as agents. <b>Bill failed.</b>
1916-17	Draft Agents Registration Bill introduced	Supported by REA & AA. <b>Bill Failed</b>
1920	Draft Agents Registration Bill re introduced	Supported by REA & AA. Bill Failed. Jack Land MLC and agent feared the bill would create a 'closed corporation'.
1922	Real Estate Institute merged with REA & AA	Greater industry representation
1920's	Boom period of the 1920's saw the emergence of the 'go-getting' salesmen. Non REI members.	Property sold on the basis of potential increased gains (up to 400% in 20 years). Direct mail used.
1923	State real estate organisations met to discuss the formation of a national body	To establish uniformed regulation and formulation of an education policy. REI national body formed soon after.
1926	Jack Lang 'agent' became Premier of NSW	Rallied by industry for regulation to be passed to control 'go-getters' however no action.
1926	Commonwealth Institute of Valuers formed	Evolved into Australian Property Institute & governed valuers
1929	'go-getter salesmen activity was at its height.	Blacktown Council approached the REI to make representation to NSW Government to protest against 'go-getters' and the impact this was having on legitimate real estate selling.
1930-35	'go-getter' activity disappeared and became a non issue	Prosperity of the 1920's ended with the Depression and property purchase was greatly reduced.
1933	Country Stock & Station Agents Association called for a Registration Bill	Agents Registration Bill from early 1920's was reintroduced for consideration for consideration by NSW Parliament, however the matter petered out.
1935-39	Building activity increased and confidence returned to the property market.	Major agents recorded in Sydney recorded best year since 1920.
1941	Election a Labour Federal Govt during war years saw the need to curb inflationary pressures	Pegging of rents and limitation on the increase in the sale price of property by 10% over the purchase price or last valuation
1940-41	Bill introduced governing real estate agents NSW	Ensure agents complied with the above selling provisions.
1942	Federal Government intervention to direct all resources and finances to the war	Controls over, building construction, lending and property transactions made valuers jobs difficult with lack evidence
1943	Valuation profession came under fire	<ol style="list-style-type: none"> <li>1) Agents who stated valuers still needed their local knowledge to make valuations</li> <li>2) Federal administrator of land sales raised concerns over how valuations were being conducted having regard to the constricting impact of the war.</li> </ol>

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<b>Date</b>	<b>Issue</b>	<b>Purpose / Action</b>
1943	Valuation profession came under fire	3) Agents who stated valuers still needed their local knowledge to make valuations 4) Federal administrator of land sales raised concerns over how valuations were being conducted having regard to the constricting impact of the war.
1944	Valuers Division of REI formed	1) Establish a common pool of data for valuers to use 2) Create uniformity in valuation methods
1948	Land Sales Control Act withdrawn	Housing market began to boom along with agency services
1948	Landlord & Tenant Act 1948 (NSW)	Pegged rents and was opposed by the REI. Pegging of rent kept investment property prices in check
1950-55	Withdrawal of Land Sale Control Act saw owner occupied property boom	Easing of the squeeze on Sydney housing with a construction boom and prices moving at a greater rate than wages growth
1960	Real Estate Agent licensing provisions increased	Introduction of prescribed course of study and examinations
1961	Strata Titles Act 1961 introduced	Paved the way for sale of units of airspace
1967	Further amendments to licensing as Real Estate Agent	Minimum age 21 and 2 years experience under a licensed agent
1970-72	Heated property market led to purchasers being out bided after having verbal agreement with selling agents	Gazumping was officially identified as a practise which drew the attention of Dept of Consumer Affairs
1975	Trade Practises Commission established (Agents commissions came under review)	Reviewed REI scale of fees and replaced these with a maximum statutory remuneration scale of fees soon after
1975	Valuers Registration Act introduced in NSW	Regulation requested by professional valuers for protection against unscrupulous and untrained laymen.
1977	Rental Bond Board established	Administer and manage rental bonds lodged by tenants
1979	Gazumping re emerged with property boom	Sales advice notices introduced by REI, however soon withdrawn due to being used by some agents to legally bind purchasers to some undesirable property
1981	Some property practitioners operated property / strata management services only & held trust without regulation	NSW Government required licensing for property management services.
1986	Residential Tenancies Act introduced in NSW	Took tenancy matters out of the Local Court System and created rights and protection for residential tenants.
1987	Minimum academic requirement for real estate licensing became UG 2 Diploma Course	Lift the educational qualifications and knowledge of practitioners in training.
1991	Auctioneers & Agents Remuneration Regulation was repealed	No floor or ceiling on agents fees and commissions. The objective being to create a more competitive environment
1999-03	Two Tier Marketing & Vendor Rebates proliferates	Concerns raised by Real Estate Regulators and ASIC
1999	Review of financial activities of real estate agents	Conducted by ASIC to determine if agents selling property provided investment advice in the selling process

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<b>Date</b>	<b>Issue</b>	<b>Purpose / Action</b>
2000	A summary of findings - Review of financial activities of real estate agents	Some agents provided financial advice (Negative gearing / Capital gains projections) when selling property
2002	Review of the Property Stock and Business Agents Act 1941 (NSW)	<ol style="list-style-type: none"> <li>1) Section 46 prohibits agents using tailored financial advice and to qualify any advice provided as being general.</li> <li>2) Buyers agents recognised by law, however, agent can only act for one side only in property transaction.</li> </ol>
2003	New regulations for Property Stock and Business Agents Act 1941 (NSW)	Introduction of compulsory CPD and cooling off periods introduced for agency agreements.
2004	Property Investment Advice Discussion Paper Released	Committee comprising state Govt's ASIC & ACCC

Source: Real Estate Institute NSW, Australian Property Institute & NSW Legislative Assembly Hansard.

## Reference List

- Australian Property Institute (2004) [www.propertyinstitute.com.au](http://www.propertyinstitute.com.au)
- Australian Securities Investment Commission (1999) Review of Financial Activities of Real Estate Agents – Technical Paper (ASIC)
- Australian Securities Investment Commission (2000) A Summary of Findings - Review of Financial Activities - of Real Estate Agents – (ASIC)
- Australian Securities Investment Commission (2002) Building the Financial Services Review Board Framework (ASIC)
- CCH Australia Limited (1996) The CCH Macquarie Dictionary of Law, North Ryde
- Commonwealth Treasury (1997) Financial Systems Inquiry Final Report, Canberra. Commonwealth of Australia
- Real Estate Institute NSW (1986) The Sign of the Waratah, Real Estate Institute NSW, Sydney
- McDonald, G. (1999) “Two Tier Markets” Australian Property Journal **35**: 516-523
- Robinson, M. (2004) How will the FSRA impact on Property Professionals. Australian Property Institute, Sydney
- Herriot, I. (2001) “Its time for honourable valuers to be countered.” Australian Property Journal **36**:683-687
- Hutley, P. S. B. Bennett, A.E. & Russell, P.A. (2003) Introduction to Financial Services Reform Act 2001. Butterworths
- Lang, A.G. (1994) Estate Agency Law and Practice. Law Book Co, Sydney
- NSW Legislative Assembly (2003) Real Estate Industry Reforms Hansard & Papers, NSW Parliament, Sydney
- Ministerial Council on Consumer Affairs Working Party (2004) Property Investment Advice Discussion Paper. Queensland Government, Brisbane.
- Nickols, F. (2004) Change Management [home.att.net/~nickols/change](http://home.att.net/~nickols/change)
- Fisher, S. (2000) Agency Law, Butterworths Australia.
- NSW Dept Fair Trading (2003) National Competition Policy Review, Sydney
- Baxt, R. Black, A. & Hanrahan, P. (2003) Securities and Financial Services Law, Butterworths, Sydney.