

18 April 2017

Consumer Property Law Review
Policy and Legislation Branch
Consumer Affairs Victoria
GPO Box 123
Melbourne VIC 3001

By email: consumerpropertylawreview@justice.vic.gov.au

Dear Sir/Madam,

Submission: Consumer Property Law Review—Sale of land and business: options for reform

Consumer Action Law Centre (**Consumer Action**) is pleased to make this submission in response to Consumer Affairs Victoria's *Sale of land and business: options for reform (Options Paper)*, as part of the review of Victoria's consumer property laws. We note our submission to the review dated 2 June 2016 in response to *Issues Paper 3: Sale of land and business (Issues Paper Submission)*.

This submission and our Issues Paper Submission are focused on vendor terms contracts and rent-to-buy arrangements in the residential property market. This is an area in which we have seen significant harm to vulnerable homeowners and hopeful home buyers. We strongly support the prohibition on these schemes and the other increased consumer protections proposed in the Options Paper. Our comments are detailed below.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a

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national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

Options 2 and 15—Offences and penalties

Consumer Action supports the proposal to retain existing offences under Victorian consumer property laws, in addition to the offences under the Australian Consumer Law. We believe this will better cover the field and protect people in a broad range of transactions. See p 2 of our Issues Paper Submission.

We support a review of penalties under the *Sale of Land Act 1962* (Vic) (**Sale of Land Act**), and increases where current penalties are an ineffective deterrent. One example is the offence of a seller not paying a deposit into a trust account within seven days, which is subject to a penalty of just 10 penalty units¹—currently \$1,554.60, which is trivial when compared to the typical amount of a home deposit.

We also strongly agree with the introduction of new offences of advertising, arranging or brokering terms contracts and rent-to-buy arrangements for residential property (see further our comments below on Option 8).

Options 6A and 6B—Early release of deposits

We support Option 6A, to repeal the process for early release of deposits. See further pp 2-4 of our Issues Paper Submission.

Options 7A and 7B—Off-the-plan sales

We have seen high risk off-the-plan sales involving terms contracts. We support increased off-the-plan buyer protections. See further p 6 of our Issues Paper Submission.

Option 8—Vendor terms contracts and rent-to-buy arrangements

Consumer Action strongly supports the prohibition of vendor terms contracts and rent-to-buy arrangements for residential property in Victoria. In our view, it is the only effective way to stop (rather than just reduce) the ongoing harm caused by these schemes. We recognise it as a significant advancement of consumer protections in Victoria.

Consumer Action's report [*Fringe Dwellings: The vendor finance and rent-to-buy housing black market*](#) (October 2016) details the problems with industry practices and legal frameworks which have led to significant legal, finance and personal harm to vulnerable people.

Our research and casework has led us to the conclusion that residential rent-to-buy agreements are extraordinarily high risk and appear to have no discernible benefits for anyone, other than perhaps the intermediaries (and some property owners) who broker them. The risks of vendor terms contracts are also significant. Hopeful home buyers pay significant amounts towards what they expect will be their own home, when there is slim to no chance of them ever owning the property.

¹ Sale of Land Act s 25.

Our experience reflects the statement in the Options Paper that current Sale of Land Act protections are not useful to vulnerable consumers.² We agree that retaining these schemes with additional protections, such as requiring money to be held on trust, or enhancing disclosure requirements, would not be feasible or effective.³ Our research has not found a legal framework in any another jurisdiction that adequately protects people in these schemes. We have also identified systemic non-compliance with existing laws. In short, tinkering around the edges is not the answer.

We also strongly support the proposed new offences of advertising, arranging or brokering rent-to-buy and vendor terms contract schemes, and significant penalties being attached to these offences. In particular, deals brokered by intermediaries have caused unfathomable harm to desperate home owners and hopeful home buyers. Often intermediary brokers have much to gain and little to lose in these deals. The offences will make it clear that rent-to-buy and vendor finance brokering is not a legitimate business in Victoria.

We acknowledge that there may be a place for vendor terms contracts in farming and commercial property sales. Limiting the prohibition to residential sales is therefore appropriate, given that this distinction between types of property is already made for other purposes, and can be ascertained from the sale contract. It is a proportionate and feasible carve out from the general prohibition.

Option 9—Land banking

Consumer Action has not represented or advised people on land banking. However, there are similarities in the problems with land banking schemes and vendor finance/rent-to-buy schemes. These similarities includes the ‘option’ to purchase element of the transaction and misleading and deceptive conduct by spruikers (see p 15 of our Issues Paper Submission).

We support the proposal to hold deposit moneys on trust until the option is exercised or any plan of subdivision is registered, and also the proposal to limit the maximum term for these option agreements.

Consumer Action considers that a reasonable maximum term for any option agreement would be in the range of three to five years, which would be a fair balance between allowing adequate time for the purported ‘investment’ to mature, and the need protect people from being locked into land banking arrangement. After the maximum time period has expired, either party could terminate the arrangement with written notice.

Option 12—Modernise the Sale of Land Act and improve its readability and operation

Consumer Action supports this option. The complexity of the Sale of Land Act including its definitions, which can be inconsistent with other legislation, makes provision of advice time-consuming and challenging. With respect to vendor finance, the case studies in our *Fringe Dwellings* report demonstrate that it can be expensive and difficult to effectively advise purchasers about their rights.

² Options Paper p 33.

³ As outlined in the Options Paper pp 33-34.

Please contact Susan Quinn on 03 9670 5088 or at susan@consumeraction.org.au if you have any questions about this submission.

Yours sincerely,

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive style with a long, sweeping tail on the letter 'y'.

Gerard Brody
Chief Executive Officer

A handwritten signature in black ink that reads "Susan Quinn". The signature is written in a cursive style with a large, circular flourish at the beginning.

Susan Quinn
Senior Policy Officer