



# ALPA

# Submission

## CONSUMER PROPERTY LAW REVIEW - Estate Agents and Conveyancers: options for reform

**To:**

Consumer Property Law Review  
Policy and Legislation Branch  
Consumer Affairs Victoria  
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## ALPA General Introduction

The Australian Livestock & Property Agents Association Ltd (**ALPA**) submission is in response to Consumer Affairs Victoria undertaking a review on consumer property legislation with reference to the Estate Agents Act 1980, Owners Corporations Act 2006, Conveyancers Act 2006 and the Sale of Land Act 1962.

Our submission will contain our response on the Estate Agents Act 1980 and the Sale of Land Act 1962.

However, we don't believe that we have the experience or expertise to comment on the Owners Corporations Act 2006 and Conveyancers Act 2006.

## Australian Livestock & Property Agents Association (ALPA)

**ALPA** is the national peak industry body for livestock and property agents.

**ALPA** represents more than 1,200 agency businesses across Australia. Collectively this group plays an important role in livestock, wool, merchandise and rural property sales and marketing.

**ALPA** members handle in excess of 97% of rural agency business Australia wide.

**ALPA** is one of the largest national organisations of small rural business men and women, relied on to protect the interests of agents and producers nationally.

**ALPA** national membership includes Elders, Landmark, Ruralco and private livestock agencies across Australia.

## ALPA Comments

**ALPA** appreciates the opportunity to provide this submission to Consumer Affairs Victoria and welcomes the opportunity to discuss our submission if required.

### Definitions

*Option 1 - Modernise and revise the definition of 'estate agent'.*

*Question 1. What other issues should be addressed in the revised definition of estate agent, and what is your evidence of the issue?*

**ALPA** is satisfied that the definition of estate agent is currently sufficient and is easy to understand in Victoria only. However, we would like to see the term real estate agent used instead of estate agent. This is in line with the other states in Australia and takes out confusion if consumers have real estate dealings in different jurisdictions.

### Training and Work Experience

*Option 3 – New Licence categories with varying training and work experience standards*

**ALPA** is of the belief that introducing additional licence classes is unnecessary and we do not support this option. This will impose extra red tape and costs to the industry by mandating the extra two units of competency required under this option. Many ALPA members are employed in the role of OIEC by corporate organisations.

Some agents move roles within the company and may be the OIEC in one location and not at the next location. We are concerned that this will cause confusion within the corporate organisations.

#### *Alternative options – Agents representatives*

*Option 4A - Increase training standards for agent's representatives*

*Option 4B – Confine the role of an agent's representative*

*Option 4C – Abolish agent's representatives and provide alternative work experience pathway*

*Question 4. What would be the costs to industry of requiring all licensees in charge to undertake additional training, as proposed by option 3?*

*Question 5. What transitional period do you think would be appropriate to provide estate agents who will need to apply for estate agent (licensee in charge) licences to undertake the additional 2 units of competency required to obtain a Diploma in Property Services (Agency Management)?*

*Question 6. Which of options 4A, 4B and 4C is the best approach to address issues associated with agents' representatives?*

*Question 7. Are agents' representatives likely to experience any difficulties getting their employers to attest to their having achieved core work experience competencies?*

**ALPA** does not support additional licence categories to be introduced however we support option **4A** to increase training standards for agent's representatives.

We believe that increased training should result in better consumer protection while ensuring that quality on the job training will benefit the development of those new to the industry.

#### **Continuing Professional Development**

*Option 6A – Mandate continuing professional development for estate agent, agents' representatives and conveyancers*

*Option 6B – Deliver ongoing and targeted information for real estate agents, agents' representatives and conveyancers, in partnership with industry associations*

**ALPA** agrees with option 6B.

**ALPA** has a strong view that compulsory CPD should not be mandated.

**ALPA** believes that CPD should be done by the Principal or officer in effective control however ALPA strongly encourages members to be updated with relevant industry information specific to state legislation and preferable to be driven by the needs and wants of industry and not devised by training providers to determine the content of any training.

ALPA would like to be involved in the development of training targeted at our rural based members to ensure that the training and information to be delivered is relevant.

#### **Professional Indemnity Insurance**

*Option 9B – Require conveyancers and estate agents to hold professional indemnity insurance in order to practise*

*Option 9C – Require conveyancers and estate agents to obtain professional indemnity insurance in order to be eligible to be licensed*

*Question 11. What is the appropriate level of monetary coverage for any one claim that should be specified for professional indemnity insurance for estate agents?*

**ALPA** believes estate agents should obtain and hold professional indemnity insurance. This is very positive for consumers as they would be covered by those in the industry who don't do the right thing either intentionally or un-intentionally. Professional Indemnity policies should be based on a minimum of 5 million dollars.

### **Office management**

*Option 10 – Amend the Estate Agents Act and Conveyancers Act to facilitate remote supervision of estate agencies and conveyancing businesses*

*Question 12. Are there any specific risks associated with removing requirements for physical supervision of an estate agency or conveyancing business that should be addressed?*

**ALPA** supports this option 10. Many rural based estate agents have multiple branches/offices in different locations. In some cases all the administration and paper work is processed at one office. Policies and procedures will need to be addressed to be sufficient to ensure the consumer needs were protected and compliance is being met.

### **Negotiating the sales authority**

*Option 15 – Provide a 'cooling-off' period for sellers who have entered into sales authorities for residential properties*

*Option 16 – Require estate agents to provide sellers of residential property with a fact sheet on sales authorities*

*Question 14. Are there any other categories of sophisticated sellers who do not need the benefit of the protections offered under options 15 and 16?*

*Question 15. Is a three business day period sufficient for the cooling-off right proposed by option 15? If not, what is the appropriate period of time?*

*Question 16. Would there be merit in requiring sellers who have entered into sales authorities to 'opt in' to those authorities within three days, rather than providing an 'opt out' mechanism through the proposed cooling-off period?*

*Question 17. What other information would be relevant to include in the fact sheet proposed by option 15?*

**ALPA** does not support option 15 or 16. Our members believe that there is satisfactory information included within the current sales authorities to ensure that consumers have all the relevant information when making decisions.

We do not believe that there is evidence in the industry to warrant a cooling off period or a fact sheet for sellers at this point.

### **Financial benefits to agents**

*Option 20 – Provide for changes to commission-sharing arrangements to be disclosed*

*Option 21 – Remove the ban on commissions under section 55 of the Estate Agents Act, but introduce additional protections for sellers*

*Question 18. Does a 21 day cooling-off period provide sufficient time (particularly for sellers in rural areas) to access independent legal advice on a sale?*

**ALPA** understands that commission sharing is common within the industry and currently is not disclosed nor does it impact on consumers. We do not see any reason to make amendments therefore we do not agree with option 20.

**ALPA** supports removing the ban on commissions under section 55 however we believe that definition on prohibited persons need to have extra clarity particularly where the licenced agent is a corporation. This could impact employees wishing to purchase the property and they may not be in the real estate industry directly. We believe that a 21 day cooling off period is extreme and unnecessary. A 7 day cooling off period would be more suitable as this time still allows for the seller to seek necessary advice.

#### **Role of and objectives for the EAC**

*Option 34A – Retain the EAC, with amendments to refine its role and objectives*

*Option 34B – Abolish the EAC*

*Option 34C – Replace the EAC with a broader property industry advisory or reference group*

**ALPA** believes that the Estate Agents Council is very important in Victoria and we support option 34A. It is a very vital link from industry to inform Government on what is happening at the ground level. Without this link, decisions may be made to the detriment of the industry. ALPA is very fortunate to have a representative on the EAC and we hope this continues to ensure rural estate agents have their voice heard.

#### **Victorian Property Fund**

*Option 35 Modernise and clarify the basis for VPC claims and extend the purposes to which excess funds can be applied*

**ALPA** is very satisfied the way the VPC is currently working especially when providing excess funds to assist in the training of estate agents in Victoria. We believe that it would be beneficial to modernise and to replace outdated terminology.

#### **Modernisation of the legislation**

*Option 36 – Re-enact the Estate Agents Act and make minor amendments to the Conveyancers Act to reflect modern conveyancing practice*

**ALPA** supports this option. The current Estate Agents Act can be difficult to understand and can be interpreted in different ways. It is very important to have a set level of clarity of understanding of the Estate Agents Act and not to have any level of ambiguity.

**ALPA** would like to thank Consumer Affairs Victoria for the extension of time for ALPA to provide this submission. **(END)**



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**ALPA membership is a signature of professionalism in the industry**