

**Consumer Property Law Review- Option Paper 3- May 2017-
Conveyancers and Estate Agents**

Submission by Jim's Conveyancing

(National Office on behalf of Victorian franchisees)



List of options and consultation questions

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?

Jim’s Conveyancing: We shall only respond by agreeing there are many people who negotiate the purchase and sale of property who are not currently captured by the definition of ‘estate agent’ and should be, as discussed in this paper.

Option 2 – Remove the definition of ‘conveyancing business’

Questions

- 2 Should section 4 of the Conveyancers Act be amended to clarify that ‘conveyancing work’ does not include legal work carried out for the purpose of preparing powers of attorney? Is there any other work that conveyancers should not be permitted to carry out?

Jim’s Conveyancing: Limited General Powers of Attorney are required in many conveyancing transactions and we believe it is important that conveyancers can still be able to conduct the preparation of these documents. For example, the day before an auction one party may not be able to attend or one party may need to travel urgently before settlement and may ask another person to execute the transfer of land and settlement documents on their behalf.

- 3 Should conveyancers be permitted to lodge adverse possession applications under the *Transfer of Land Act 1958*?

Jim’s Conveyancing: We agree that this is specialised yet conveyancers should be able to lodge these applications. There are many areas of conveyancing (such as NICO transfers and related party transfers) that require just as much, if not, more skill and experience to do and these are currently being conducted by conveyancers. In general the professional is very sensible and in practice conveyancers who do not have the skills or experience to lodge adverse possession applications will either turn down the work or start the work and seek the assistance of someone more experienced to complete it. In some instances conveyancers have more relevant experience than some lawyers that will assist them in an adverse possession application.

Training and work experience

Estate agents

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

Option 4A – Increase training standards for agents’ representatives

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

Option 4C – Abolish agents' representatives and provide an alternative work experience pathway

Questions

- 4 What would be the costs to industry of requiring all licensees in charge to undertake additional training, as proposed by option 3?
- 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)?
- 6 Which of options 4A, 4B and 4C is the best approach to address issues associated with agents' representatives?
- 7 Are agents' representatives likely to experience any difficulties getting their employers to attest to their having achieved core work experience competencies?

Jim's Conveyancing: We are not providing a response in relation to this question.

Conveyancers

Option 5 – Increase training standards and strengthen work experience requirements

Questions

- 8 In addition to the eight units of competency currently prescribed for conveyancers, what additional competencies should prospective licensees be required to complete, as part of an Advanced Diploma?
- 9 What areas of competency should licence applicants be required to provide evidence of, to meet work experience requirements?

Jim's Conveyancing: This is a very important issue as previously discussed in our former submission. We have had lengthy and multiple discussions with our counterparts in other states where the study requirements and experience requirements are considerably more than Victoria. We are also able to use our considerable experience of training dozens of conveyancers and lawyers. It is our strong opinion that additional units of study are not going to be considerably beneficial. After an initial study period and training only experience can mould a professional conveyancer. Many conveyancers who come out of lengthy studies in conveyancing are armed with a theoretic knowledge that does not entirely arm them for the conflict, enormity of variation and dealing with real life high pressure situations. We believe that if the requirements for licensing is to be increased then an increase to experience is the only part that should be increased. This will also help reduce the instances of licensees applying where they really have little or no supervised experience at all but are able to find someone to say that they do.

Continuing professional development

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

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

Ineligibility and disqualification criteria

Option 7 – Strengthen ineligibility and disqualification criteria in the Estate Agents and Conveyancers Acts

Permission application process

Option 8 – Tighten threshold requirements for permission applications under the Estate Agents Act and Conveyancers Act

Question

- 10 Are there additional circumstances (other than those proposed in option 8) in which estate agents, agents' representatives and conveyancers should be restricted from applying for permission to be licensed or employed?

Jim's Conveyancing: We have no additional feedback in regards to this point.

Professional indemnity insurance

Option 9A – Require conveyancers to hold professional indemnity insurance in order to practise

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?

Jim's Conveyancing: We are not providing a response in relation to this question.

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?

Jim's Conveyancing: Ideally there would always be a licensed person at a place of business however this is not always practical, for example in small businesses where there may only be 2 or 3 staff and the licensee is there most of the time.

The risk (and we refer only to conveyancers in this response) is that, in taking away the requirement for direct supervision by a licensed person, some conveyancers may effectively hire themselves out as a licensee, acting as the responsible person for un-licensed, inexperienced conveyancers who want to start their own businesses without waiting, training and studying.

Officers in effective control (Estate Agents Act)

Option 11 – Strengthen the duties of those who run estate agency businesses, require an outgoing OIEC to be replaced within 30 days and introduce the capacity to suspend a licence where an outgoing OIEC is not replaced

Licensing issues specific to conveyancers

Option 12 – Establish a voluntary licence suspension process

Question

13 Is the three year timeframe proposed by option 12 appropriate, or do you have an alternative suggestion?

Jim's Conveyancing: 3 years is perhaps too long as there are so many changes that affect our industry every few months. We would be concerned being looked after a conveyancer who had been out of touch for 3 whole years. We believe the suspension should be no more than 12 months and then not be able to be suspended for another 12 months so that their skills and experience can be honed again. If the length of the suspension period is decided to be longer than this then they should have to conduct CPD during the period to prove that their knowledge and skills are being kept up to date.

Option 13 – Amend the Conveyancers Act to provide for automatic licence cancellation following non-payment of annual fee and failure to provide annual statements

Roles and responsibilities of estate agents

Option 14 – Amend professional conduct rules to include specific rules relating to property management

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

Questions

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

Jim's Conveyancing: No, it is our opinion that vendors of investment properties, multi-million dollar property and commercial and industrial property are not necessarily sophisticated and completely informed. If these measures are going to be initiated there is no harm and very little extra work for a selling agent in conducting them with all vendors. However, it will be very difficult for selling agents to be forced to give vendors a cooling off period and some vendors are very eager to sell quickly and the agent would be effectively wasting their time commencing any marketing activities or contacting prospective buyers until the period expired. Selling agents should be compensated if the vendor cools off.

- 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?

Jim's Conveyancing: 3 business days is potentially 5 or 6 days when weekends and public holidays are considered. This is a very long time and should not be any longer.

- 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?

Jim's Conveyancing: We do not support this proposal. Vendors can be very difficult to track down or may be busy or distracted. This will cause unnecessary stress and workload for selling agents.

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

Jim's Conveyancing: The following topics could be covered in the proposed fact sheet as they are the most common and/ or significant complaints or queries we receive from our clients regarding selling agents and sales authorities are as follows:

- How much commission and advertising will I pay if I take the property off the market?
- How much commission and advertising will I pay if I find my own buyer or sell to a relative during the authority period?
- What recourse do I have if I don't feel my selling agent is acting in my best interest or isn't 'trying' to sell my property sufficiently?
- Do I pay for advertising that hasn't been published yet?
- Does the agent receive a commission or 'kick back' for spending my advertising monies

Financial benefits to agents

Option 17 – Limit disclosure requirements under section 49A of the Estate Agents Act for 'sophisticated sellers'

Option 18 – Amend section 50 of the Estate Agents Act to enable commission to be retained in certain circumstances

Option 19 – Amend section 49A to clarify that agreements between estate agents are not subject to disclosure requirements

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?

Jim's Conveyancing: We do not in any way support the introduction of ANY cooling- off period for vendors. This would simply be disastrous. It would cause massive uncertainty and costs for purchasers including:

- The inability for purchasers who are currently tenants to give notice to their landlords
- Booking removalists and packing
- Conveyancing costs that may be incurred in the first 21 days which are critical to the conveyancing process including searches and s27
- Bank fees for valuations and loan applications
- Emotional stress and uncertainty

Option 22A – Retain and strengthen the prohibition on retaining rebates, improve disclosure provisions and clarify the meaning of 'benefit'

Option 22B – Permit estate agents to retain rebates provided they fully disclose the rebates to their clients, and clarify the meaning of 'rebate'

Professional conduct rules – payment of commissions (referral fees)

Option 23A– Prohibit conveyancers from paying commissions in return for client referrals

Option 23B – Prescribe the form for disclosure of commission payments in return for client referrals

Question

- 19 Is there value in conducting research on effective consumer disclosure?

Jim's Conveyancing: We have no further feedback, other than that provided in previous submissions in regards to this question.

Costs disclosure

Option 24 – Improve existing costs disclosure provisions in the Conveyancers Act

Question

- 20 What would be a 'significant change' in legal costs that a conveyancer should disclose?

Jim's Conveyancing: Our most important concern with this question is that it creates inequality in competition unless lawyers and conveyancers have the same cost disclosure requirements. It is still widespread in our industry, including lawyers and conveyancers to underquote or manipulate the way fees are quoted to appear more 'competitive'. Like virtually all other industries it should be compulsory to quote 'including GST' unless the work is for commercial, industrial or residential development property. The quoting of disbursements is impossible for the vast majority of consumers to decipher. Among 5 conveyancers and lawyers who quote 'plus disbursements' the amount may range from \$60 to \$500 depending on what is being charged for (e.g. the actual cost of searches all the way through to settlement attendances, phone calls, photocopying and printing, fees on top of searches and contractors). There is

little incentive for these professionals to keep disbursements of clients to a minimum as there is no cap on what they can spend.

VCAT inquiries and alternative approaches to address poor conduct

Option 25A – CAV to be given limited disciplinary powers

Option 25B – CAV to take over VCAT disciplinary functions

Option 25C – A central licensing, regulatory and disciplinary body in CAV

Penalties

Option 26 – Undertake a full review of the penalties under the Estate Agents Act

Placing trust money in interest-bearing accounts

Option 27 – Enable conveyancers to deposit trust money in interest-bearing controlled money accounts

Offences relating to trust accounts

Option 28 – Review and update trust account offences and penalties in the Estate Agents Act

Ban on large cash deposits

Option 29 – Prohibit estate agents from accepting large cash deposits for property sales

Auditor requirements

Option 30 – Amend the Estate Agents Act to enable government to introduce tighter controls on audits and auditors, if necessary

Keeping track of conveyancing records post closure or sale

Option 31 – Establish stronger obligations for document retention post business closure or sale

21 Should there be an obligation on conveyancers to return paper certificates of title to their clients, in the event that they close their business?

Jim's Conveyancing: Without question, yes. And they should be severely penalised for not doing so. Jim's Conveyancing clients spend thousands, if not tens of thousands of dollars a year and often thousands more in settlement delays having titles replaced because their former lawyer cannot be found.

Display of licence

Option 32 – Remove the requirement for physical display of a licence by an estate agent or conveyancer

Roles and functions of the BLA and the Director of CAV

Option 33 – Develop educational material explaining the roles and functions of the BLA and CAV