Submission - Urban Development Institute of Australia

Urban development institute of australia (victoria)

March 2016

# ABOUT US

### Urban Development Institute of Australia (Victoria)

The Urban Development Institute of Australia (the Institute) is the peak industry body for the urban development sector. In Victoria, we provide over 320 member companies with the benefits of policy and advocacy activities, industry intelligence, networking and business building opportunities.

Our members include developers, consultants (planning, environmental, heritage, engineering, design and legal), financial institutions, suppliers, government authorities and utility providers. Together we drive industry discussion and debate and work with all levels of government to achieve successful planning, infrastructure, affordability and environmental outcomes.

# CONTACT

|  |  |
| --- | --- |
| **Danni AddisonChief Executive Officer****P: 03 9832 9600****M: 0400 230 787****E:** **danni@udiavic.com.au****W:** [**www.udiavic.com.au**](http://www.udiavic.com.au) | **John CaseyPolicy and Advocacy Director****P: 03 9832 9600****M: 0402 788 219****E:** **john@udiavic.com.au****W:** [**www.udiavic.com.au**](http://www.udiavic.com.au) |

### Detailed Issues and Feedback

**Part A – Estate Agents & Conveyancers**

*Definitions*

The proposed definition for an estate agent is so broad that it would identify different players within the market that aren’t the target for these reforms. Currently as the market has evolved, more and more industry stakeholders are involved in the negotiation of contracts for the sale and purchase of land.

For example, there are a number of valuers and accountants that are setting up departments to assist their clients with the negotiation of sale and lease documents. Additionally, some development companies are setting separate entities to carry out the sales across their various projects. The broad definition of an estate agent as currently proposed could trigger the provisions of the Estate Agents Act for some of these unintended players.

Another way in which the industry has evolved that requires the definition for estate agents to become more detailed is the growth of online sales. Many development companies carry out their own sales campaign but use an external provider to set up and manage their online sale platform. Some of these platforms allow purchasers to sign up to contracts online. Due to the broad definition, there will likely be some confusion as to whether the company that sets up and manages the platform for the developer would need to meet the requirements for an estate agent.

In addition to some of the unintended impacts of the proposed definition, it is unsure as to whether the definition captures the use of overseas agents.

To overcome some of the issues the definition may need to specify exclusions or clarify what is meant by “on behalf of another person”. To overcome any transparency, fee and duty of care issues with unlicensed persons, a standard contract could be developed.

*Training and Experience*

There is some concern around both agents and conveyancers that met licencing requirement that would still not be considered competent. A review of training courses is needed in addition to increasing the work experience requirements (i.e. increasing the number of years they have to work under supervision.)

The Institute agree to the need for conveyances being required to undertake CPD that is aligned with requirements for property lawyers. However, of greater importance is the need for standards and vetting of CPD providers. Due to the level of influence CPD providers have on the conveyancing process, allowing CPD providers to inform conveyancers on processes and standards that are based on opinion rather than industry accepted standards can hold up the process and increase legal costs.

Prior to implementing CPD requirements for conveyances, a framework for ensuring quality and consistency of training needs to be implemented.

*Roles & Responsibilities of Estate Agents*

The role, duties and obligations of estate agents is already spelt out in the Estate Agents (Professional Conduct) Regulations 2008 and several other pieces of legislation. Educating agents on their statutory obligations would be a more effective approach than attempting to make the Estate Agents Act the central repository of all legislation in relation to the role, duties and conduct of estate agents.

*Trust accounting*

It has been identified that a number of issues are increasingly arising from the mishandling of money by estate agents. A number of developers are stipulating that all deposits are to be paid into the solicitor’s trust account.

This change in practice suggests that imposing strict obligations in relation to trust money has not been effective. The Institute are of the opinion that the combination of training and CPD on the handling of trust monies and the imposition of higher penalties for breaches.

**Part B – Conduct of Owners Corporation Managers**

While there has been very few reported cases of owners corporation managers’ misconduct, the Institute believe that the current review provides an opportunity to make long term amendments in the following areas:

* + 1. serviced apartments;
		2. short term letting;
		3. apportionment of costs (the *Owners Corporations Amendment Act* 2013 remains unclear);
		4. termination of schemes; and
		5. building defects, Domestic Building Warranty Insurance, the Brookfield Multiplex Decision.

Notwithstanding that, the Institute would like to provide the following comments on the specific matters raised in Part B of the issues paper.

*Registration and Unsuitable Managers*

Currently the requirements for registration is minimal. Introducing a licencing scheme with a grandfathering process is recommended to ensure managers hold appropriate expertise, experience and qualifications. Additionally, it should be noted that owners corporation management has little or nothing to do with property/ facilities management or the practice of an estate agency.

*Conflicts of Interest and other duties in procuring goods and services*

The current SCA (Vic) Standard Form Contract of Appointment mandates the disclosure of commissions, including insurance commissions. Actual commissions should be disclosed and it is not recommended that insurance commissions are abolished as the “fee for service” alternative will only increase insurance premium and possibly excesses. The position taken in NSW should be given further consideration on this matter.

*Unfair terms in management clauses & Termination of management contracts*

Contract clauses and rollover clauses are not regarded as unfair terms. There is a difference between the fairness of terms of Contracts of Appointment entered into by developers and those entered into by owners corporations after registration of Plans of Subdivision.

To enable the building to settle and be populated, a three year cap on the on a management contract is too short. It is recommended that a 5 year cap apply. However, further consideration needs to be given to larger developments that release buildings in stages. For, example the cap may apply from when a large proportion of lots from the overall development have been sold.

Rollover clauses are important for continuity and efficiency.  Managers frequently deal with circumstances where no quorum is achieved at a meeting, meaning decisions made are interim subject to the statutory criteria. If rollover clauses are abolished it may be that a meeting has not occurred or decisions made are interim, when for example insurance premiums become payable.  If a manager's management is deemed to cease in those periods the ramifications could be detrimental.

 The current legislation allows owners corporations to call meetings up to 15 months after the previous meeting, whereas the anniversary of management contracts will be yearly, which is a statutory recognition that black holes will be created if rollover clauses are abolished.

Long term management contracts may be in the owners’ corporation's interests.  For example the annual management fee may be reduced if a longer contract term is conferred.  Additionally, financiers will only lend money on management rights over extended periods.

*Manager’s conduct around voting*

The existing restrictions imposed by section 86(4) appear sufficient.

*Financial Transparency*

It is recommended that separate owners corporations establish and maintain separate accounts.  Owners corporations, including multiple owners corporations within one Plan of Subdivision are separate legal entities which must be managed, administered and accounted separately.  That should extend to separate accounts.

Pooled accounts enable criminal activity.  They create significant problems when an owner requests to inspect the owners corporation's records under section 146 or when VCAT or a Court orders discovery.