

16 July 2013

Ms Anne Driscoll
Commissioner for Consumer Protection
Consumer Protection, Department of Commerce
Locked Bag 14
Cloisters Square WA 6850

Dear Ms Driscoll

Property Industry Codes of Conduct Discussion Paper

I write in response to your recent correspondence regarding the Property Industry Codes of Conduct Discussion Paper (the Paper).

The Consumer Advisory Committee has considered aspects of the Paper and submits the following comments.

Style of the Codes

The suggestion with respect to the Codes of Conduct containing a clear set of general principles with guidance notes is considered to have merit for the reasons already stated in page 5 of the Paper. The Committee is of the opinion that guidance notes would provide:

- a) information about the Department's interpretation of a particular provision;
- b) examples to inform industry participants on the relationship of the Code to their day-to-day activities; and
- c) information to aid both industry participants and consumers in forming a general understanding of the Code.

The development of a clear set of general principles, sitting under the relevant industry Act, would enable the different property industry codes to be modified into one less prescriptive code that would have the capacity to be adopted for different property occupations. An example of this approach is the National Privacy Principles which sit under the *Privacy Act 1988*.

Definitions

Consistent terminology across the consumer law arena is desirable. It is important therefore that terminology used in the codes and the definitions of that terminology should be consistent with the Australian Consumer Law.

Further, because the majority of consumers engage in property transactions on a limited number of occasions, it is important that industry-specific terminology is clearly defined.

Interrelationship with the Australian Consumer Law

In respect of whether industry codes should prescribe matters that are already (or similarly) prescribed in the Australian Consumer Law, it is submitted that industry codes should aim to replicate such provisions using consistent terminology. The rationale for this is that:

- those employed in the property industry need to know the requirements of the relevant code, but cannot be expected or be required to know general consumer laws ;
- the particular principle could be supported by examples relevant to the particular industry;
- industry codes are able to prescribe specific offences, the commission of which may disqualify an agent from holding a licence, thus regulating the industry. A general law may not do this.

Where relevant, the proposed principles would provide a reference to the Australian Consumer Law. This would:

- a) assist both industry participants and consumers to recognise that the particular principle does not exist in isolation but rather is underpinned by a (more substantial) consumer law.
- b) potentially lend a greater sense of gravitas to the provisions of the particular code.

Knowledge of Act and code of conduct

In respect of whether the codes should expressly state that an agent must have knowledge of the relevant laws, it is submitted that such a provision would assist in dispelling any assumption that the industry code is the only law relevant to the industry.

Any such statement should go a step further and make reference to the relevant laws. It should also contain a notice that not only the general law, but other named and unspecified laws may apply. By way of example, the *Code of Conduct for the Supply of Electricity to Small Use Customers 2012* states:

"This Code is not the only compliance obligation in relation to marketing. Other State and Federal laws apply to marketing activities, including but not limited to the *Australian Consumer Law (WA)*, the *Spam Act 2003*, the *Spam Regulations 2004*, the *Do Not Call Register Act*, the *Telecommunications Industry Standard 2007* and the *Privacy Act 1988*."

Thank you for the opportunity to provide comment on the Paper. The Committee would appreciate the opportunity to consider any draft Code that is produced consequent to this consultation, with the intention of providing further comment.

Yours faithfully



Judy McGowan

Chair, Consumer Advisory Committee