# C O R R E C T E D   V E R S I O N

**LAW REFORM COMMITTEE**

**Inquiry into property investment**

Melbourne — 12 November 2007

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Mr H. Jones, Vice-President, Real Estate Buyers' Agents Association of Australia.

**The CHAIR** — Hugh Jones, welcome to the hearing of the Law Reform Committee. Just a couple of preliminaries before we start: the discussion that we have here operates under the Parliamentary Committees Act and that extends parliamentary privilege to anything that you say, and indeed what we say, in this hearing. That means basically that there cannot be any legal action taken by anybody who feels offended by what you have said. But if you say the same things outside the confines of this building, that privilege will not extend to you. So you are clear on that. As well, Hansard staff are here and they will take down everything that we say. You will be provided with a copy of that after the hearing; it will be sent to you. You can make some slight changes to that but not change the substance of it, obviously. We will keep this as informal as possible. We have about 30 minutes. We will leave it to you to say whatever you would like to say to us in relation to the terms of reference and your work and then we will jump in with some questions.

**Mr JONES** — I might start by just introducing myself, the two areas that I believe are of most concern and maybe four potential solutions to those areas of concern. I will keep it informal as well and if you want to jump in with questions on the way, please do so. My name is Hugh Jones. I am Vice-President of the Real Estate Buyers Agents Association of Australia, REBAA, which is a national body. I have been past chairperson for a number of years of the Real Estate Institute of Victoria's Buyers Agents Chapter as well. I have been in real estate for 15 years and for the past six years operating exclusively in an independent advice-type role, rather than as a selling agent or a property manager.

I believe there are two categories of concern in the property advice industry. The first one is a minor concern and an irritation to someone who is in the industry professionally — that is, people who give advice or participate in a transaction who are paid to do so but are not licensed or experienced to do so. People who fall into these categories are people like solicitors who go and bid at auctions, accountants who give comments on the state of the market, financial planners who often do not understand the fundamentals or the grassroots of the real estate market but are giving advice on rates of return or things like that or areas of growth, where they are reading out of the newspaper and probably are no better informed than their clients.

They are more of an irritation. I believe the second group are of far more concern, and I have met many of them over the years. These are the wealth creators that Monique mentioned in her quick chat. They are far more threatening. These are people who set up seminars or education or all sorts of different distribution networks to either sell stock as an agent, or sell their own stock of new product exclusively, but they are making out to the purchasers that they are actually giving advice to make them wealthy. One of the big issues that I see in this area is the rate of commissions. To give you an idea, a normal selling rate of commission in the real estate industry might be between 2 per cent and 3 per cent of the sale price. In this area of the industry it might be anything from 5 per cent up to 12 per cent, sometimes 15 per cent. From that large sum of money everyone has a piece of the pie on the way down. The accountant who suggested that you went and saw Colin, who is the property expert, would receive a referral fee which might actually be higher than what a normal selling agent would receive for the whole transaction.

This whole part of the market is quite corrupt, and it is very much a two-tiered market. People have to pay over the odds for the property to actually justify the extra three or four layers of commission that are in between. We have seen all sorts of things. It has been an issue on the Gold Coast for many years. When the legislation changed on the Gold Coast a lot of the people moved to Melbourne, and there are probably 30 to 40 of them operating in Melbourne at the moment. At one end of the scale you have Henry Kaye and his seminar business. At the other end of the scale you might have sole operators or two-man bands that are working exclusively from referrals from accountants. Often those referral fees are not disclosed to the clients at all. They are the two areas of major concern that I see.

In very quick summary — and then you can ask me questions — I think the first thing that needs to be done is that anybody who is actually giving investment advice or property purchasing advice needs to do an additional course apart from the normal agents representative licence. The vast majority of people who are giving this investment advice are only agents representatives; they are not licensed estate agents. I think from memory a licensed estate agent has to complete 24 units to gain his licence; I think it is 3 or 4 for an agents representative at the moment. There is nothing in there whatsoever about investment and what makes a good investment and what makes a bad investment, and economic cycles. I do not think there is enough about the whole concept of agency, and if I am operating as your agent I am meant to be putting you in as good a position as myself, whereas these people are making out that they are representing their client, but their true client is actually the vendor and not the purchaser. I think there needs to be additional training for anybody who sells investment properties or who buys investment properties.

There is also the deregulation of agency fees, which I think happened in 1995 when fees were deregulated and it was anticipated that they would go down. They have for the majority of the market, but for this part of the market that we are talking about they have gone up. That would not have been able to happen if a maximum fee was still regulated. I think that deregulating the fees actually created a real problem in the industry that had not been there in the past. People could not charge 5 per cent or 10 per cent fees if regulation was still in place.

I think the contract cover page for a contract of sale for real estate, whether it be a contract note or a formal contract, needs to be prescribed to include a section outlining who is paying the adviser. Is it the vendor or is it the purchaser? A lot of these people just do not know; it is not transparent at all. They do not know that their new best friend, who is a wealth creator and who is advising them, is actually being paid by the vendor, probably with a bonus if they sell the property for a certain price.

They are the four, and I will just cover them again. A short course if you are selling investment property; a short course if you are buying investment property; regulation for maximum fees; and a prescribed contract cover. We have a prescribed contract cover at the moment, but it needs to include who is paying the adviser, so it is a transparency issue. The whole wealth creation seminar industry, which slowed down a little bit after all the trouble with Henry Kaye, is still going. It has just gone a bit further underground. In our business we get clients referred by private banks, by solicitors, and by accountants, but there is absolute full disclosure as to how that happens, and we are acting for the purchaser in those events not for the vendor; whereas there are a number of accountants out there who are referring purchasers to property advisers, but the vast majority are being paid by the vendor.

I am not sure if you know how these transactions occur at the wholesale level. What happens is that you might have a builder who might either be building a large block of apartments or who might be selling refurbished apartments. Normally those types of developers need to do at least 10 units at a time, but it might be up to 50 or 100. To underpin their finance they will try to gain contracts before they commence construction. One of the ways they do this is that they will have a number of groups around town — financial advisers they are called; they are not licensed planners — who will take an option fee on the property. For example, if the value of the property is $100 000 per unit, they will pay an option fee to buy them at $110 000 — a non-refundable option fee which might be $10 000. That group will then place the units through their seminar arm and might sell them at $120 000 or $130 000 and then substitute contracts at settlement. That is where the extra layer of fees is derived from. This model, I guess, has gained traction since probably 1998–99 when it really started to ramp up to a point in probably 2003–04. The majority of developers used to sell their stock via traditional means of open for inspections. You might have noticed that there used to be a section of *The Age* every Saturday where there would be a whole page of display ads for developers selling blocks of flats at open for inspections. That all stopped because all the stock then was sold by the financial adviser route. It is a secondary market. The properties generally that are sold by this route, if they were sold on the open market, would sell, obviously, for much lower rates. The only time when it sometimes comes unstuck is when the valuer for one of the banks goes through and it does not value up. That tends to only happen with the people who are not in a terribly secure financial position and probably should not be making such an aggressive investment in the first place, but, as was previously mentioned, generally the valuations are not disclosed to the client any way. Any questions?

**Mr FOLEY** — Just specifically on that, what do you think that has done to the whole broader issue of housing affordability?

**Mr JONES** — It has pushed the prices up, quite obviously. It has also created this issue. A lot of these people have been protected by the fact that we have had a rising market for so long, but when these people try to resell them, because their circumstances might change in two or three years time, they are often selling for less than what they actually paid in the first instance. It was the same when we saw a lot of the properties at Docklands that were sold on deposit power bonds and people were speculating — they were nominating and substituting contracts prior to settlement. Some of those people came unstuck and a lot of people had to settle who had no intention of settling.

**Mr FOLEY** — Which lead to group actions and things.

**Mr JONES** — That is right. I guess that purchases have been very lucky that the market has gone up. If that market had not been rising as quickly as it has been, I think this would be on the front page of the paper. At the moment it is something which is hidden under the surface, but it is a real issue. It has made a big impact on the prices of properties. It has not made an enormous impact on rents but it will in the future. We were talking about rents going up. Rents compared to sale prices are actually still quite low. I think rents will go up further.

**The CHAIR** — You have touched on a number of issues there. I guess our primary concern is how all this impacts on consumers, especially vulnerable consumers. Could you give us a picture about how people are being hurt in this and the extent to which people are suffering detriment?

**Mr JONES** — Yes. I have advised people who have actually purchased and who have come for advice after they have purchased to maybe organise a sale or to find out what their options are. The seminar industry is fairly predatory. I guess it gains people who would not have thought they were capable of making such investments otherwise. When these people buy properties well above the market value and then their circumstances change or they cannot rent them out or they cannot rent them for the returns that they were promised, they have to have fire sales. Luckily the losses have been modest at this stage because of the rising market, but in a normal market those losses would have been fairly substantial. A vast number of people have bought properties. I know of a number of large developments where maybe 50 per cent of the whole development was sold in this manner at very, very high rates per square metre and which people cannot get out of now. They have attempted to sell them, the property is passed in, so they think, 'We will batten down the hatches and keep it for another five years until we can get out of it'. A number of people are in that boat.

**Mr FOLEY** — I might come back to the consistent theme of where you saw the regulation, if there were to be the issues around transparency and provision of declarations of training, at what level the regulation should be — state or Commonwealth? How did you see that operating? What did you see as the cost of that, who would wear the cost of that and what might that do to affordability, punters or — —

**Mr JONES** — I do not think it is going to make a difference to affordability. I think part of it should be attached to the subagents licence, or the agents representative as it is called now. I think the advice businesses that are reported to the Office of Fair Trading need to be pursued more vigorously. I know when I was chair at the Real Estate Institute we would nominate people who we thought were doing the wrong thing or who might be unlicensed, and it was not pursued vigorously at all. As far as the state versus federal level, until the Estate Agents Act is the same across all states I do not think that is going to happen. Queensland some years ago did the right thing and tried to push these people out of the market with their regulations, and I think Victoria needs to do the same thing.

**Mr O'DONOHUE** — I think it is a good point you make about the concept of agency and expanding the educational requirements for a subagents course or an agents representatives course. Correct me if I am wrong, but it is only about a week in duration, is that right?

**Mr JONES** — It is crazy. You have got people out there who are giving advice who have had 10 days training effectively. The sums of money that they are earning are very high. You have got people with one year's experience who are making $100 000, $200 000 a year and sometimes more. The amounts of money they are advising on are very high as well. The system is crazy.

**Mr O'DONOHUE** — Just a more general question, what sort of space in the market do you occupy or how much of the market do you occupy? It is a relatively new industry, the buyers' rep.

**Mr JONES** — There are no numbers on it. We sort of work in the inner suburbs, particularly the inner eastern and inner south. It would not be unusual for us to be competing against another buyers' agent at an auction, but there are no numbers on it. Once it would have been the cash-rich and time-poor who employed a buyers' agent, whether they were looking for an investment or for a home to purchase. I now see that that market is moving to the middle class as well, so it is expanding, and there are more and more buyers' agents out there. Most of them do the right thing, and they are genuinely looking after their clients.

**The CHAIR** — Just on that, can you give us a word portrait: you said it is shifting to the middle class?

**Mr JONES** — Yes.

**The CHAIR** — Why are they coming to you, other than the time factor?

**Mr JONES** — Time is a massive factor, and also we have people who might be overseas who need someone on the ground, but more and more we are having people who have heard of people who have made mistakes in property transactions and they want to take independent advice. We are also having people who are frustrated because they have missed out on so many auctions because they could not evaluate the property in the first instance, they could not negotiate or they missed out because they did not understand the sales process — if it was a pre-auction offer, a tender or a private sale.

**The CHAIR** — So partly it is a response to an increasingly complex environment in which people are seeking to invest?

**Mr JONES** — Yes, and a fast-moving market.

**The CHAIR** — Could things be done that would make it less valuable for people — I know it would not be good for your business — not to need people like you, so they could do it themselves?

**Mr JONES** — I know what you mean.

**Mr O'DONOHUE** — Less complex.

**The CHAIR** — Could things be done to make it less complex or to simplify it, or do you think it is an inevitable movement?

**Mr JONES** — I think it is inevitable. Obviously it is to my own benefit, but also I welcome people who have representation on both sides of the transaction. Traditionally only the vendors have had representation, and I welcome purchasers having representation to try to level the playing field. What could you do to make it better? I think the outlawing of non-disclosed dummy bidding has made a big difference to the marketplace. There are very few agents who are still using dummy bids that are not disclosed. It is still happening, but it might have been eradicated by 95 per cent. Obviously I do not know the numbers on it, but it has changed dramatically. I think that with the quoting — and it is always talked about — there is only so much you can do about that in a rising market. You can have a property appraised, and by the time it actually hits the market six months later the value could be quite different. As long as there is a reasonable difference between the quoted price and the vendor's reserve price, I do not see an issue. When a property is quoted at $1 million-plus, and I go to the auction and I bid to $1.3 million and it is passed in to me, I find that incredibly frustrating and dishonest. It is misleading.

**The CHAIR** — Given that it is an emerging business, do you get a sense that buying agents are also providing property investment advice?

**Mr JONES** — Yes, I do. I was listening to Monique speaking before, and I know her business quite well. They focus on residential property — investment and homes — but predominantly residential investment. We do homes and we also do commercial property. What we are looking to do with our clients is encourage them to buy a property which has good fundamental ingredients for what their outcomes might be, whether that be having the property easily let or whatever else it might be. So, yes, we are giving a degree of advice. Obviously we are not talking about guaranteeing returns or anything like that, but we are giving a degree of advice on what makes a good or a bad investment property.

**Mr BROOKS** — I just want to clarify this. You have made it pretty clear you see a need for better training, possibly some extra components being added to the real estate agents course, regulation of the agent's fee, and you mentioned disclosure of commissions and so on. I note that the Real Estate Institute has taken a position of support for the carve-out contained in the federal parliamentary committee's report, which carved-out real estate agents as not having to be part of a new proposed national scheme. I just note that different opinion or position that you have from the Real Estate Institute, and I wanted to see if you had any comment on that or on their position.

**Mr JONES** — Bringing in anything like extra training to the real estate industry is going to be met with resistance to a certain extent. The real estate industry has got its own continuing professional development structure which has, I think, improved over recent years. I think that we need to have different training to general financial planners, but pretty clearly we need additional training if we are offering investment advice.

**The CHAIR** — We are almost out of time. Just one more question: in relation to self-regulation, you have a code of conduct and standards of practice for your members?

**Mr JONES** — Yes.

**The CHAIR** — How many of the agents who are operating out in the field are members of the Association, and how do you deal with breaches of that code?

**Mr JONES** — There are about 20 members of the Association nationally at this stage. It is a reasonably new association, and we are trying to recruit, but it is also a matter of trying to recruit the right people. We are not interested in recruiting everybody and then having the problem of having the name tainted or anything like that. As far as breaches go, we are fortunate that at this stage we have not had a significant breach, but we have had meetings, and we have set out a constitution on how such breaches would be handled.

**The CHAIR** — That is a first step, yes.

**Mr JONES** — Funnily enough there have been very few issues as far as claims on buyers' agents are concerned. Indeed normal public indemnity insurance is cheaper for a buyers' agent than what it might be for a selling agent.

**The CHAIR** — Which says something.

**Mr JONES** — Which says something, particularly when, I believe, there is more risk as a buyers' agent than there is as a seller's agent. But I think it tends to attract people who are fairly conservative by nature, if they are true buyers' agents, but the true buyers' agent is quite different from your financial adviser or property spruiker-type person, obviously, So the insurance is significantly lower, I have found.

**The CHAIR** — I think time has taken a march on us. There are lots of other things we could have talked about, but thank you very much for coming in, Hugh.

**Mr JONES** — A pleasure.

**The CHAIR** — It is appreciated. You will get a copy of the transcript, and no doubt Kerryn and Susan will be in contact with to you follow up any issues.

**Mr JONES** — Thank you.

**Witness withdrew.**