

Photographic Representations

17. **ACCC Statement of Concern.** “The increase in popularity of advertising via the Internet has seen an increase in complaints to the ACCC about the ‘touching up’ of pictures that appear on these sites. More and more consumers use the Internet as their primary source of information about a product. The ACCC is concerned that photographs of properties which have been touched up to hide undesirable characteristics or enhance other features could mislead consumers.”

18. **REIA Guidelines.** The REIA reiterates the guidelines expressed in paragraph 5 above, including the guideline that whether conduct is misleading or deceptive, including the portraying of photographic images, can depend upon the overall impression or the implied representation produced by that conduct. Therefore, agents must ensure that photographic images and other market devices are not used in a manner that can give rise to implied representations that are false or otherwise amount to misleading or deceptive conduct. Consequently:

- 18.1 Real estate agents must not alter or permit to be altered photographic images of properties, digitally or by other means, such that the images no longer truthfully and fairly represent that property;
- 18.2 Whether the alteration of a photographic representation is misleading or deceptive will depend upon all of the circumstances. For example, digitally adjusting the exposure of a photograph so as to brighten the lighting of the photograph taken on a dull day may well be legitimate. However, removing television aerials or power poles adjacent to the property; brightening up paint work on a house or over-stating the views that might be achieved from the property may well amount to misleading or deceptive conduct;
- 18.3 Real estate agents may well be liable for misleading representations contained in photographs that have originated from external sources such as an advertising sub-contractor or the vendor. The passing on of such photographs by agents to potential buyers can amount to misleading or deceptive conduct by the agent. Agents would be well advised to ensure that their contracts with advertising sub-contractors include provisions to ensure that the sub-contractors do not engage in misleading and deceptive conduct, including in connection with marketing representations contained in photographs;



- 18.4 Real estate agents should also bear in mind guideline 5.8 above, in that it is generally no defence to an action for misleading or deceptive conduct for a real estate agent to claim that the consumer concerned should have checked the information provided by the agent or for the agent to claim that the consumer has failed to make reasonable enquiries.