



Submission to the Royal Commission into Misconduct in the Banking Industry

APRIL 2018

PREPARED BY

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REIA SUBMISSION TO THE ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING INDUSTRY

The Real Estate Institute of Australia (REIA) is the peak national association for the real estate profession in Australia. It is the largest professional association of real estate agents and other property professionals in Australia

The REIA's members are the State and Territory Real Estate Institutes, through which around 75 per cent of real estate agencies are collectively represented. The 2011 Census records the Rental, Hiring and Real Estate Services Industry employment sitting at a total of 117,880. By occupation the key data recorded by ABS Census were 64,699 business brokers, property managers, principals, real estate agents and representatives.

The REIA represents an important element of the broader property and construction sector which together makes a significant contribution to Australia's social climate and economic development. Property contributes \$300 billion annually in economic activity.

Importantly, REIA represents an integral element of the small business sector. Some 99 per cent of real estate agencies are small businesses and 11 per cent of all small businesses in Australia are involved in real estate.

REIA is committed to providing and assisting research and well-informed advice to the Federal Government, Opposition, professional members of the real estate sector, media and the public on a range of issues affecting the property market. It seeks to promote the interest of consumers, its members and the property sector on national property related issues. In doing so, the Institute believes it has a substantial role in the formation of regulatory policy and practices of the property market in Australia

The REIA welcomes the opportunity to provide a submission to the Royal Commission into Misconduct in the Banking Industry.

Annexures

- Copy - article from Real Estate Business – LocalAgentFinder partners with Australian corporate superpower
- Copy – letter from Simon Cohen to Gil King dated 16 March 2017

Foreword

The property services industry like many other industries has seen the emergence of challengers to the traditional service delivery models. These challengers and the affect they have had on the traditional models have earned the descriptive title of “disrupters” and substantial industry disruption is being colloquially referred to as Uberisation.

The proliferation of the disrupters is undoubtedly due to the exponential growth in technology. The impossible ten years ago is now the market expectation. Accordingly, those who seek to supply goods and services to the contemporary consumer must evolve. This is particularly so for the services industry.

The property services industry has by no means had an exemplary response to disruption, there has nonetheless been an appreciation of the dangers and opportunities. Given disruption is inevitable, those that will survive will be those that look for opportunities to disrupt themselves, those that lead and own the disruption as opposed to those that stay loyal to antiquated systems and process. Therefore, embracing technology as a services provider and in doing so to improve and enhance the consumer experience is not only a good business practice, it is unquestionably the only strategy for one's survival.

Unfortunately, in the fluid environment of rapid change, some people see opportunities with the use of technology to unjustly profit. This class of disruptor's business model adversely affects the targeted industry and the consumers that industry serves. This submission focusses on these opportunistic entities and the consumer detriment created by their activities.

Real Estate Agent Selection Services

The author has expressed the view above that leading and owning your industry's disruption is the most prudent strategy. There are, however, some disruptors that respected industries cannot adapt to combat. In the property services industry there has been a proliferation of entities inserting themselves in the traditional workflow of services and in doing so, offering services of questionable value.

In the environment of disruption, there is a clear recognisable distinction between an industry disruptor that seeks to deliver efficiencies, additional quality services and those that utilise the environment of disruption to offer irrelevant services and/or mislead consumers for profit.

The traditional sale of a residential property starts with the vendor's decision to sell their property. That then necessitates interviewing and ultimately engaging a real estate agent to provide the agreed suite of services and strategies, that will attract the maximum market attention, which ultimately leads to the sale of the property. Every property, vendor, vendor expectation and property transaction are unique in some way. Accordingly, selecting the appropriate real estate agent that best responds to these specific requirements of the property and the transaction more generally, is essential for the best outcome and a harmonious and productive relationship. It may arguably be the most important decision the vendor makes in the entire process.

Given the significance of engaging the best agent, a number of businesses have been established to assist vendors with this decision. These businesses portray

themselves as the consumer advocate, an impartial party assisting the vendor with this important decision. The services offered are supposedly free to the consumers further adding to their attraction.

Buying and selling real estate, is for most people the single biggest financial decision they will ever make. It can be a very stressful and emotionally draining experience, consequently a service provider who offers to alleviate some of the stress is not surprisingly welcomed. It is in this niche that the real estate agent selection service (“REASS”) providers operate and offer to “freely” undertake the research and selection of the agent that best responds to the vendor’s specific requirements. In reality, however, very little if any research of the vendor’s specific needs is undertaken by the REASS. Similarly, negligible if any genuine enquiry is made to qualify the skills and competencies of the agent recommended to the vendor. The REASS accepts the trust of the vendor willingly and recommends the vendor appoint an agent from the stable of agents registered with the REASS. Importantly, unless an agent is registered with, or is, in some way associated with the REASS, they will not be referred to the vendor. In truth, the REASS is nothing more than a listing service for agents who subscribe to the REASS. The typical agents that actively engages with the REASS are those inexperienced new comers to the industry who find it difficult to compete with experienced, locally recognised respected agents. The latter class of agents do not engage with the REASS due to their ability to secure market engagement from their local reputation. Therefore, the agent that the REASS appoints will in all likelihood be far less competent and experienced than other agents in the vendor’s area. This is clearly a breach of trust.

As discussed above, the services provided by the REASS are free to the consumer. The REASS provider, however, is remunerated by the agent that the REASS recommends the vendor to engage. The fee payable is usually in the vicinity of 20% of the agent’s commission. It will come as no surprise given the minimal setup costs and with the revenue potential of the “services” the market is very crowded with REASS providers, and with more entering it.

In addition to the REASS not recommending the best agent, the agent appointed will regularly seek a higher commission to off-set the costs of the REASS. This therefore means the vendor pays more for an inferior service. Given the sums of money involved in the typical sale of real estate, the inferior services delivered by an inexperienced agent can, and regularly does equate to significant loss with respect to the sale price of the vendor’s property.

The Board of the Institute sought a meeting with one REASS to better understand the model and the services offered. The REASS accepted the Institute’s request and prior to the meeting made the Institute aware that it was seeking a commercial relationship with the Institute. There was at the meeting a very robust exchange of views. The REASS conceded during the meeting that the vendor did not necessarily always appoint the best agent, but defended its services, arguing that the agent

appointed is the best agent from the agents that subscribed to the REASS. The Institute asked how the selection was made from the agents that subscribe, the answer provided was less than satisfactory the REASS provider preferring to keep its comments extremely broad. The Institute suggested that the REASS provider engage exclusively with the vendor, and be paid by the vendor. The REASS provider surprisingly said that no one would pay for it. This in the mind of the Institute appropriately valued the services of the REASS. Nearing the end of the meeting the Institute advised the REASS provider that the Institute could not support its service model believing it detrimental to the consumer and ethical real estate agency practice.

Recent Developments

The attached article from Real Estate Business announces that the Commonwealth Bank of Australia (“CBA”) has entered into a relationship with LocalAgentFinder (“LAF”) a REASS. For the reasons set out above the Institute finds it disappointing that that CBA would engage with this business model and the services the REASS offer. The CBA is a sophisticated entity and therefore the Institute assumes would have undertaken considerable due diligence. The CBA would also be aware of the obligations of financial advisors, the journey that lead to the reforms in that industry and the underpinning principals that support the current regulatory environment. The REASS provider who met with the Institute sought a relationship to legitimise its services and leverage the Institute’s brand. The Institute refused. LAF has arguably achieved their goal of legitimacy with their relationship and endorsement from the CBA.

In relation to CBA’s commercial relationship with LAF, the Commission may be minded to consider the Australian Consumer Law (“ACL”). The Institutes notes, in particular, section 18 of the ACL.

The Institute supports the concept of assisting vendors to select the agent that best responds to the vendor’s specific needs. Given the complexities of property transactions and sums of money involved, there is clearly a need in the market for such a service. However, when the service provider is remunerated by the agent that they select, there is a clear conflict of interest. For these reasons, financial advisors are now required to be remunerated by their client rather than the investment house where client’s money is deposited, the Institute believes the REASS should be similarly remunerated by the vendor.

It is worth noting the opinion of the Victorian Department of Justice and Regulation on the matter of REASS. In a letter to the Real Estate Institute of Victoria (attached) they say the REASS may be misleading under the ACL and will be monitored.

The Institute thanks the Commission for the opportunity to provide this submission and is available to assist the Commission further with respect to this issue if required.

LocalAgentFinder partners with Australian corporate superpower



27 February 2018 by Tim Neary [7 comments](#)

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Fast-growing comparison service LocalAgentFinder has received a significant shot in the arm, announcing a new heavyweight partnership agreement with one of Australia's largest corporations.

The lead generating service has teamed up with Commonwealth Bank.

Commonwealth Bank general manager Carrie Fox said that customers can now "easily" find a real estate agent.

She said that the platform will be offered to home buyers as part of the bank's Home Buying Property Hub.

Ms Fox also said that the partnership will complement the bank's other digital tools.

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Will third-party lead generating platforms continue to entrench themselves into the real estate landscape?

Yes – but they are unwanted (42%)

Yes – and rightly so, they provide a useful service (20.3%)

No – they are leeches, have no inherent value and will not last (34.3%)

Huh? - what are third-party lead generators? (3.5%)

Total votes: 143

The voting for this poll has ended on: April 1, 2018

“We understand that purchasing a new property is about more than just finding a home loan; it’s a broader experience which real estate agents play a big role in.

“This partnership will provide more relevant information and service for customers when they need it to support them through this journey.

“LocalAgentFinder’s platform will give customers an independent comparison and is a good example of Commonwealth Bank partnering with experts to provide more value for our customers to help them realise their property goals.”

LocalAgentFinder CEO Matt McCann said that the CBA partnership will cement real estate agent comparison as the fastest growing channel for agent research and selection.

“The LocalAgentFinder and CBA partnership delivers millions more Australians access to a unique consumer offering that removes a key stress point when selling or managing a property – selecting the right agent,” Mr McCann said.

“LocalAgentFinder’s comparison platform will continue to provide the deepest insights on over 5,000 agents – including commission rates, sales performance and independent reviews – making us the most complete offering in the real estate agent comparison market.”

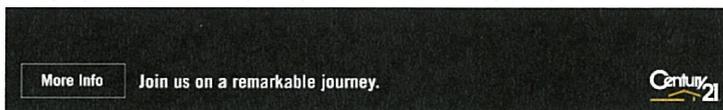
Mr McCann called the partnership a “great endorsement” of the platform.

He also said that the partnership will see CBA and LocalAgentFinder share insights to help improve the real estate experience for customers.

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16 MAR 2017

Our ref: CD/17/121134

Mr Gil King
Chief Executive Officer
Real Estate Institute of Victoria
335 Camberwell Road
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Dear Mr King

REAL ESTATE-FINDER WEBSITES

I refer to a letter from the Institute of 27 October 2016, following discussions at the Real Estate Reference Panel Meeting last year, which provides further information on real estate-finder websites.

As you know, this issue was raised for consideration as part of the first issues paper for the Consumer Property Law Review '*Conduct and Institutional Arrangements for estate agents, conveyancers and owners corporations managers*'.

The feedback that your organisation gave on this topic, along with the additional information you provided following the reference panel, was seriously considered by the review team in developing options for legislative reform.

I understand that you are eager to view and comment on these options and am pleased to advise that I expect an options paper for reforming the *Conveyancers Act 2006* and *Estate Agents Act 1980* to be released shortly.

I am also concerned that agent-finder website that advises that their services are free for sellers, when in fact a proportion of the fee they pay to the agent they engage will be paid to the website, may be misleading under the Australian Consumer Law (ACL). Similarly, representations that website search results have been 'personalised' for users in any way, or that the website providing the search tool is 'independent', may be misleading. For these reasons, I intend to monitor the operation of agent-finder websites, particularly as their business models emerge, to ensure they comply with the Estate Agents Act and the ACL.

Thank you for raising this matter with me and I look forward to receiving your comments on the soon to be released options paper.

Yours sincerely

Simon Cohen
Deputy Secretary, Regulation &
Director, Consumer Affairs Victoria