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Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street QLD 4000

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Section 216(2) Property Occupations Bill 2013

The main purpose of this submission is to request a clarifying amendment to the prohibition in section 216(2) of the Property Occupations Bill 2013 (Qld) (Bill).

REA Group Limited (REA) operates the Australian market leading property advertising website realestate.com.au. It is unclear from the current terms of section 216(2) whether the prohibition is intended to restrict a real estate agent from providing a confidential notional price to property portals such as realestate.com.au for the purpose of operation of website search functionality. The amendment we request would make it clear that a real estate agent who only discloses a notional price to a property portal for search purposes would not be in breach of section 216(2), provided that the notional price is not published on the portal. We expand on the justifications for this submission on page 2.

We further submit that the section 216(2)(c) restriction on agents providing price guides will per se lead to inefficiencies in the Queensland property market and suboptimal outcomes for vendors, agents and buyers. Prospective buyers are increasingly time poor and need to know quickly whether a property is within their 'ballpark' price range. Our research reveals that prospective buyers are increasingly inclined to pass over a property where there is no indication of approximate price range. 66% of potential purchasers say that they will not pursue a property if a price is not displayed. Without any kind of price indication, vendors and their agents would miss out on a number of prospective buyers who might compete for the property and drive up the price. The leads that agents obtain are likely to be lower quality and 'qualified' leads will take more time to discover. It is a universally accepted economic principle that freedom of information is critical for the efficient operation of competitive markets.

We submit that agents should be able to provide a price guide if they consider that to be in the vendor's best interests, or at least be able to provide a price guide if their vendor instructs them to do so (consistent with the terms of section 216(3)). The choice to display a price guide is essential for vendors, particularly in low-mid price range properties where demand is generally stronger than the top-end and vendors may wish to distinguish their property by price. An unduly restrictive application of section 216(2) may force the agent to act contrary to their primary duties of agency – to act in their principal's best interests and in accordance with their instructions.

We note that even a broad application of section 216(2) would not restrict non-agent entities from providing price guidance eg corporate property data providers or portals themselves using historical data. It seems an

absurd result when the only parties who may not provide any kind of price guidance are licensed real estate agents, who are supposed to be the trusted experts in the property market.

Principal submission in relation to agents' disclosure to property portals

(i) The benefits of property portals to the Queensland property market

The primary function of these property portals such as realestate.com.au is to aggregate the property listings of multiple real estate agents. Other major property portals in Queensland include Domain.com.au, REIQ.com.au and homehound.com.au. These property portals allow property buyers to quickly and efficiently view a large number of properties that satisfy their search preferences. A key search criterion is price range, along with location, property type, number of bedrooms and bathrooms. Property portals benefit agents and vendors by providing exposure to a much larger audience than would be possible through the agents' own websites. Property portals are now critical to the efficiency of residential and commercial property markets. Most consumer search for property is now conducted online and the majority of buyer enquiry for agents and vendors is via property portals.

(ii) Search criteria on property portals

The principal search criteria on realestate.com.au are location, property type, number of bedrooms and bathrooms and price range. Further refinements are possible - minimum land size, indoor and outdoor features, eco-friendly attributes and keyword searching. This search functionality matches buyers with specified property attribute preferences with a range of suitable properties matching those preferences. For agents it provides them with better qualified leads via enquiry made through the website and vendors maximise their chances of selling their property for the best price possible.

It should be noted that realestate.com.au does allow agents to suppress any indication of price or price range on the listing itself. The only mandatory requirement in relation to price is that a confidential notional price is provided so that search results can be ranked and grouped so that buyers with appropriate budgets may be matched with suitable properties.

(iii) The intended scope of section 216(2)

We consider the best interpretation of the current words of section 216(2) is that an agent's provision of confidential notional prices to the back-end of a portal is not within the intended scope of the prohibition. That notional price is highly unlikely to be the 'reserve price' under section 216(2)(a). Neither is it likely to be the amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property under section 216(2)(b). The agent sets the notional price to bracket the property within the searches of website users who have budgets in that range.

However, it is unclear whether the notional price is a 'price guide' for the property under section 216(2)(c). 'Price guide' is not defined and the following brief guidance in the explanatory notes to the Bill is unhelpful:

“The Bill (clauses 214 and 216) clarifies that a price guide for a property to be sold by auction is not to be (sic) disclosed, whether in advertising, when asked by a potential bidder, or otherwise.”

If anything, this guidance implies there is no change to the current law. As portals have been operating under their current process for many years, without query by any Regulator, our expectation is therefore that the current process of using confidential notional prices to filter search results remains outside the scope of the prohibition.

The explanatory notes summarises the prohibition in terms of “providing a price guide at auction”. That implies a narrow scope for ‘price guide’ beyond the existing prohibitions as set out in subsections 216(2)(a) and (b). For an agent to provide a portal with a confidential notional price for the purposes of the portals search operation can hardly be considered to be providing a price guide at auction. We note that the overall purpose of the reform is to “reduce regulation” which again implies a narrow intended definition of ‘price guide’ in section 216(2)(c). Furthermore, if an agent’s disclosure of a search price to portals was prohibited, it would mean that every Queensland auction property that fits a website user’s other (non-price) search criteria would be displayed in any price band they search. Prospective buyers would gain a misleading impression as to a property’s value. At the very least, prospective buyers are likely to waste time attending auctions for properties that are not suitable for their budgets. Agents similarly would need to deal with a higher proportion of low quality leads. We do not believe that the Queensland legislature could have intended this highly undesirable market outcome.

Whilst the above represents what we consider to be the best interpretation of section 216(2)(c), we acknowledge the situation is unclear. This stems from the use of the nebulous term ‘price guide’, without further definition.

We request that section 216(2) be clarified to confirm that a real estate agent who only discloses a notional price to a property portal for search purposes would not be in breach of section 216(2), provided that the notional price is not published on the portal. Alternatively we request confirmation that the current terms of section 216(2) are not intended to restrict this activity, as appears to be the best interpretation of the section. The final alternative we ask be considered is to make explicit that an agent may provide a price guide if they consider that to be in their vendor’s best interests, or at least be able to provide a price guide if their vendor instructs them to do so.

Please do not hesitate to contact me by email paul.gordon@rea-group.com or phone 0400 961 802 to discuss any aspect of this submission.

Yours sincerely,



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