

News Corp Australia

SUBMISSION TO QLD LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE REGARDING THE *PROPERTY OCCUPATIONS BILL 2013*

23 JANUARY 2014

INTRODUCTION

News Corp Australia welcomes the opportunity to make a submission to the Queensland Parliament's Legal Affairs and Community Safety Committee inquiry into the *Property Occupations Bill 2013* (the Bill).

Our concern regarding the Bill is confined to the matter of the non-disclosure of price guides associated with properties to be sold by auctions. Of particular concern is the 'clarification' included in the Explanatory Memorandum of the Bill regarding section 214 and 216, particularly section 216(2), that the non-disclosure of price guides includes in advertising 'or otherwise' including editorial.

News Corp Australia believes that the provision of price guides for properties offered for sale at auction should not be prohibited. Rather, News Corp Australia recommends that a price guide for a property to be sold by auction should be able to be disclosed, including in advertising and editorial. It would be appropriate that the agent would need to be able to, upon request, substantiate the price guide with market analysis or other material showing how the price guide for the property was decided.

Information, including price guidance, is highly valued by consumers and is an important aspect of an efficiently operating market. Such information should not be unnecessarily restricted. To do so would be to apply regulation needlessly; and likely result in unintended consequences including an uneven playing field and market inefficiencies, and risks infringing freedom of speech.

Given the above we believe that the goal of the Bill as stated by the Attorney General, being '*positive red tape reduction reforms that support industry growth, but also maintain a high level of protection for consumers*¹' is best served by allowing the use of price guides for properties being offered for sale by auction. Further, the key objective of the Bill in advancing 'freedom of enterprise in the market place' is also better served by allowing the use of price guides.

This submission is structured as follows:

1. The benefits of disclosure of price guides, including in advertising and editorial
2. The consequences of prohibiting disclosure of price guides
3. Recommendation

¹ <http://jarrodbleijie.com.au/news/pamda-drafts-released>

News Corp Australia is a publisher of real estate advertising and real estate editorial across various metropolitan and community newspapers in Queensland, and holds a major investment stake in REA Group Limited (REA) which operates Australia's market leading property advertising website realestate.com.au.

In our view we are well positioned to recommend that real estate agents should not be prohibited from providing a price guide, including for properties offered for sale by auction, and that price guide information should not be prohibited from being advertised or incorporated into editorial content.

1. THE BENEFITS OF DISCLOSURE OF PRICE GUIDES, INCLUDING IN ADVERTISING AND EDITORIAL

Proposal in anti-consumer as price guidance information is highly valued by consumers

Consumers and prospective buyers value price guide information highly. This is evidence by surveys undertaken by REA and News Corp Australia. Specifically, the results of an REA survey² shows that prospective buyers are increasingly inclined to pass over a property where there is no indication of price range – with 66 per cent of potential purchasers saying that they will not pursue a property if a price is not displayed. Similarly, survey data from News Corp Australia shows that most important real estate related information in a property section of a newspaper is details of property prices.

Price guide information is an important aspect of an efficiently operating market

The free flow of information is an important element of an efficiently operating market. The availability and provision of price guide information – particularly in advertising – supports the efficient allocation of resources in the market as it assists consumers to efficiently allocate their time by offering a filter for analysis and decision making, and therefore assists agents to efficiently allocate their time by having an 'informed' market. As the evidence above shows, consumers and potential buyers value that information highly, and are willing to not pursue a property if a price is not displayed.

To contemplate prohibiting that free flow, for a sub-section of the market (properties offered for sale at auction) will produce outcomes that result in the inefficient allocation of resources for all parties. Indeed such price guides are a fundamentally important part of advancing one of the key objectives of the Bill – namely the need to promote freedom of enterprise in the market place and effective functioning markets. We outline some of the consequences that would likely result from the prohibition of price guides at Section 2 of this submission.

The ability to disclose price guide information gives real estate agents choice

A substantial benefit of the ability to disclose price, including in advertising and editorial, is the choice that it provides real estate agents. Rather than a prohibition – which places the lowest common denominator 'rules' on every real estate agent, preventing all agents from providing price guides relating to auction properties – it allows agents, in conjunction with vendors, to choose

² <http://www.news.com.au/finance/real-estate/nsw-real-estate-experts-john-cunningham-john-mcgrath-andrew-winter-slam-qld-proposal-to-ban-price-guides-on-properties-for-sale/story-fnd91nhy-1226776840904>

whether they to disclose price guides, particularly in advertising and editorial, on a property-by-property basis.

Notwithstanding this, it would also enable real estate agents who, in conjunction with vendors, decide not to disclose a price guide, to continue to provide a notional price to real estate portals.

Price guidance information is an important part of freedom of information and freedom of speech

Importantly, News Corp Australia believes that the availability of price guide information in advertising, and particularly editorial, is an important element of freedom of information and freedom of speech. As you will be aware, these freedoms are fundamental to News Corp Australia's business and operations, and we cannot countenance rules which infringe on these in any way.

2. CONSEQUENCES OF PROHIBITING PRICE GUIDES

A solution in search of a problem

It is not apparent to News Corp Australia that there is a 'problem' that requires this 'solution,' therefore to progress with this prohibition would be to apply regulation needlessly.

The Explanatory Memorandum to the Bill does not articulate a problem, nor does it provide evidence to substantiate a problem and justify the change from the existing provisions which do not prohibit the disclosure of price guides.

Rather the Explanatory Memorandum includes a single sentence regarding the change from the legislation currently regulating the real estate industry, the *Property Agents and Motor Dealers Act 2000* (PAMDA), and the Bill. It states:

*'Price guides at auction are banned: The Bill (clauses 2014 and 216) clarifies that a price guide for a property to be sold by auction is not to be disclosed, whether in advertising, when asked by a potential bidder, or otherwise.'*³

Indeed it is noteworthy that in the majority of proposed amendments it covers, the Explanatory Memorandum provides a rationale for the amendment and the explanation of the problem it is seeking to address, but it does so for the amendment on price guides.

Some of the key principles and building blocks of good public policy making are articulation and evidence of a problem. These do not seem to have been met in making the prohibition for price guides, and therefore should not be progressed. Of further concern, is that sub-optimal outcomes are often experienced by all parties as a result of unsubstantiated policy making.

Given the importance of price guides to consumers, and the lack of evidence of a problem, we believe that real estate agents should not be prohibited from providing a price guide, including for properties offered for sale by auction, and that price guide information should not be prohibited from being advertised or incorporated into editorial content.

³ Page21, <https://www.legislation.qld.gov.au/Bills/54PDF/2013/PropertyOccupB13E.pdf>

Prohibition of disclosure of price guides results in an uneven playing field

Prohibiting real estate agents and auctioneers from disclosing price guides for properties offered for sale by auction unduly restricts real estate agents disclosing data but does not restrict other non-agent commercial data providers that also use historical property data. To look at this from a different angle, preventing real estate agents from disclosing price guidance gives a 'leg up' to other commercial data providers who are not real estate agents and not subject to the provisions of the Bill. There is nothing to stop other data providers – who would use the same or similar data to the real estate agents – providing price guide information to the market – unimpeded – about properties offered for sale by auction. We make this point to illustrate the absurd outcome resulting from the legislation.

We do not urge the inclusion of other data providers within the scope of the Bill. Rather, we believe this is a sound reason as to why the provision of price guides for properties offered for sale at auction should not be prohibited.

Prohibition of disclosure of price guides results inefficient allocation of resources

As outlined in Section 1 previously, applying a prohibition to the the free flow of information for a sub-section of the market (properties offered for sale at auction) will produce outcomes that result in the inefficient allocation of resources for all parties.

Some possible scenarios include consumers and potential buyers having to source price guide information from multiple, potentially obscure or currently unknown sources and having to invest more time in doing so; taking this further, perhaps those sources are other data providers in the market who may charge for price guide information rather than it being provided in advertising for the property being auctioned, imposing an additional cost on the consumer as well as the time invested. Perhaps that potential buyer also approaches the agent to try to find out more price information, which the agent is unable to provide, with more of the potential buyers time taken in attempting to ascertain if it is worthy of pursuing – or not – and the agent has invested time and still the potential buyer has no price guide by which to apply to first filter – is this property in the ball park of affordability? This is a substantial inefficiency caused by a potential price guide prohibition.

Prohibition of disclosure of price guides results in an obtuse outcomes

i. Experts in the field prohibited from providing information

It seems obtuse to prohibit real estate agents – experts in their field, relied upon by the vendor as a source of robust data, and with skin in the game – from disclosing price guide information to the market, whether in advertising or editorial or otherwise. This is particularly the case when real estate agents are subject to consumer protection legislation, including fair trading provisions, which address false and misleading activities. It is more efficient for complaints to be on an exceptions basis rather than applying lowest common denominator prohibitions to the entire sub-section of the market – particularly when there is a lack of articulation of a 'problem'.

ii. Best interests of vendor may not be able to be satisfied

Another contradictory outcome is that if the prohibition is realised, while a vendor's best interest could be served by disclosing a price guide, the agent would be prohibited from doing so.

Similarly, vendors who want to disclose price guide information – including in advertising and editorial coverage – regarding a property being offered by auction are prohibited from doing so.

iii. Artificially skew the market towards fixed price sales

A prohibition on disclosure of price guides for properties being offered for sale at auction may also artificially move, or skew, sellers and buyers into fixed price sale/negotiated price arrangements solely because they are unable to provide price guide, or advertise their property adequately, due to the prohibition. They may also miss out on editorial coverage, and therefore exposure, if a price guide is not able to be used.

3. RECOMMENDATION

News Corp Australia believes that the provision of price guides for properties offered for sale at auction should not be prohibited.

News Corp Australia recommends that a price guide for a property to be sold by auction should be able to be disclosed, including in advertising and editorial.

It would be appropriate that the agent (or auctioneer) would need to be able to, upon request, substantiate the price guide with market analysis or other material showing how the price guide for the property was decided.

Recommended approach to amending the Bill

216 Real estate agent not to disclose reserve or other price

- (1) This section applies if residential property is to be, or may be, offered for sale, whether or not by auction (offered property).
- (2) If the offered property is to be offered for sale by auction, the real estate agent must not disclose to a person other than a person acting for the seller in relation to the sale—
 - (a) the reserve price set for the offered property; or
 - (b) an amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property **[DELETE THE HIGHLIGHTED TEXT]** ; or
 - (c) a price guide for the offered property. **[DELETE THE HIGHLIGHTED TEXT]**

Maximum penalty—540 penalty units.

- (3) If the **[DELETE THE HIGHLIGHTED TEXT]** **property is not to be offered for sale by auction and the** seller has instructed the real estate agent not to disclose the price at which the seller is willing to sell the offered property, the real estate agent must not disclose to a person, other than a person acting for the seller in relation to the sale—
 - (a) an amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property; or
 - (b) a price guide for the offered property.

Maximum penalty—540 penalty units.

- (4) If a real estate agent gives a copy of a comparative analysis or a written explanation (market information) to a seller under section 215(2), the real estate agent must not give the market information to a person without the seller's written approval.

Maximum penalty—540 penalty units.

[ADD HIGHLIGHTED TEXT BELOW]

- (5) The real estate agent does not commit an offence against subsection (2)(b) if the real estate agent, with the seller's approval, gives a price guide to any person for the a property to be offered for sale by auction, based on a genuine belief supported by market analysis.