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LAW REFORM COMMITTEE

Inquiry into property investment

Melbourne — 15 October 2007

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Mr J. Moore, President, Property Investors Association of Australia.

The CHAIR — John Moore, I welcome you to the hearing this morning. Thank you very much for taking the time to come in and talk to us. Also thank you very much for the submission that you have provided us with. Hansard will be recording what we say, and you will receive a copy of that in due course. You will be able to make changes to that in terms of its sense of meaning, but not, obviously, to its major content. Also I need to advise you that what is said in this hearing is subject to parliamentary privilege, which means there can be no court action for things you might say that may be a bit intemperate. But that does not extend to outside this hearing. As you saw before when observing, it is a fairly informal discussion. We will give you a bit of time to set up, and then we will just have a talk about some of the issues that we would like to question you about in more detail.

Mr MOORE — Okay. Is it all right if I go through a summary?

The CHAIR — Absolutely. Over to you, yes, entirely up to you.

Mr MOORE — To the members of the Victorian Law Reform Committee for the inquiry into property investment advice. Over the past four years the Property Investors Association of Australia has developed processes that help property investors make more informed and prudent property investment decisions by identifying ethical industry practitioners and providing independently audited due diligence information. These are initiatives that represent great value for the participants and are readily embraced. The PIAA is vitally interested in the impact this inquiry will have on our current and future initiatives and seeks to gain further industry, federal and state government support.

I would like now to provide a brief overview of the PIAA associate membership, the PIAA 5-star property development rating system, and identify a future initiative for the accreditation of property investment advisers. The PIAA associate membership — industry professionals can show support for PIAA values and principles by becoming an associate member. Associate members agree to conform to the PIAA code of conduct, support ethical behaviour and PIAA's values and principles. Associate members are listed on the PIAA website and can display and use the PIAA associate membership logo on their stationery and marketing documents to indicate their support for the code of conduct, its values and principles. They are also promoted to consumers asking for property investment advice.

Reports of dubious behaviour by associate members are investigated and, if substantiated, associate members are removed from the website until the situation is rectified. There have been no reports to date. In summary associate membership of the PIAA helps to protect investors against unscrupulous operators.

The PIAA 5-star rating system assesses potential investments due diligence information for accuracy, completeness and integrity and ensures that all information needed to make a judicious assessment is available to potential investors. The system does not suggest that the rated investment is going to be successful; rather it collects and verifies a comprehensive set of information from which an investor or an adviser can assess the potential with confidence. The system can be used for off-the-plan projects, new projects or house and land packages. The rating assesses over 200 items of information and includes project information not generally available to investors or advisers, such as project feasibilities, development application conditions and project valuations. The assessment also validates market research information; marketing material; developer, architect and builders profiles; and environmentally sustainable design criteria. Sales contracts are assessed by PIAA's legal counsel. Additionally each rated developer is required to comply with PIAA sales handover documentation and procedures. Due diligence information gathered by the assessment is provided to the PIAA associate member network of property advisers to perform investment analysis for investors. Due diligence information is available on the PIAA website. However, confidential information is reserved.

The PIAA's independent assessors work with developers to attain the greatest transparency, which inevitably leads to a high rating. A nominal cost equivalent to about 0.2 per cent of the gross market value for the project, or about \$20 000 on a \$10 million project, is charged to have the project rated.

In summary a PIAA 5-star rating provides greater transparency and a method for good industry practitioners and consumers to have a quality product officially audited, show developer commitment to transparency and good industry practice, and access audited information from which quality investment analysis can be undertaken. In addition, to enhance transparency, property sale prices from government agencies need to be made freely available.

Property investment advice and the proposed accreditation process — as an extension to the foregoing initiatives the PIAA believes that the provision of sound property investment advice needs to be based on independently

audited investment information, as this attempts to mimic a product disclosure statement; investment analysis that is provided in a consistent, easy to understand way — that is, in a consistent framework; and advisers having suitable professional indemnity insurance as a method of recourse for investors exposed to bad or inconsistent advice. An accredited property investment adviser would be suitably qualified and have their proficiency audited annually to ensure that advisers have a suitable element of the real estate licence — e.g., sales certificate qualifications — and elements of the financial services licence PS146, as this will provide advisers with the ability to take into account the personal financial situation of the investor whilst providing advice; proficiency in the provision of property investment advice in a standardised framework; and approved indemnity insurance is provided in compliance with that audit. This audit would be modified to ensure continual improvement.

In conclusion, PIAA associate membership helps investors identify industry professionals who support the PIAA code of conduct, values and principles. The 5-star property development rating system enables Australian and international property investors to access reliable, independently audited information. The Property Investors Association of Australia would like to thank the committee for the opportunity to have input to the process and seek support for its current initiatives and proposed system of accreditation of property investment advisers, an extension of the initiatives already undertaken.

The CHAIR — Thank you very much for that. Could I start off with a question of clarification. Could you describe for us the profile of the property investors that are part of the association? Do you deal with small investors as well as large investors?

Mr MOORE — We deal with anybody who purchases property. They are all investors in our framework. So anybody who purchases property and comes to us for some sort of advice is — —

The CHAIR — So it could be a person who owns a family home, has a certain level of equity in it and some other financial resources; they could come to you for advice on how they might best invest in property?

Mr MOORE — Exactly; or they may be new investors purchasing their own home and want some advice on their property as a first home owner or an investor.

The CHAIR — For the first time. Are most of the people you work with at that smaller end or are they mostly at the bigger end, the larger developers?

Mr MOORE — They are a combination. We have a cross-section of people here in Australia and overseas that we work with.

The CHAIR — Now that is clear, I can move on to where I want to go. In previous inquiries that you have been involved in there has been a focus on investment seminars and what we have called spruikers here. Do you think the problems of those investors are focused in that area of marketeering or do think it is wider than that?

Mr MOORE — I think the problem area is the lack of education that is provided to investors that is freely available, and hence spruikers market on the basis of secret information or information that is not commonly available for investors to be able to create wealth. It is a lack of understanding of property investment that is the problem; it is a lack of education.

The CHAIR — But even if there were lots of information available, for argument's sake through a government agency, there would still be an opportunity out there for unscrupulous spruikers to set up and persuade people to act in ways contrary to their interest.

Mr MOORE — That is right.

The CHAIR — So that would always be a main issue, do you think?

Mr MOORE — It would be.

The CHAIR — Or do you think it would be so diluted because of general information that it would not be much of a problem?

Mr MOORE — I think it would reduce the number of issues that would occur. The idea of our associate membership is to identify ethical operators in the industry so that investors can easily recognise those people who conform to the code of conduct and standards.

The CHAIR — Do investors come to you with complaints?

Mr MOORE — They do, yes.

The CHAIR — What sorts of things do they tell you?

Mr MOORE — We have a wide range of complaints, from people just investigating different, let us say — I do not want to necessarily call them spruikers, but they may be people who are providing education, and people come to us and say, ‘Are these people genuine or not?’. There may be a situation where a developer has, let us say, reneged on his sale contract with investors, and investors are inquiring as to why that has happened. We have had a couple of instances of that occurring, and we are re-examining one at the moment where a developer has actually invoked his sunset clause on the development. It appears that he wants to sell them at a higher price, so he is using that as a method to get higher prices for the development, and so the investors lose out, for instance.

The CHAIR — Do you undertake any research on the kind and quality of complaints and the outcomes and effective redress for them? Do you look at all of that in a systematic way?

Mr MOORE — We do look at it. I can give you some examples of what we have done in the past — that is, an investor has come to us with an ad that was in one of the magazines and said, ‘Is this accurate?’. We have investigated that and found it is not. We have gone back to the investor and said, ‘The information they have provided in that ad is not accurate’, and we have also gone back to the advertiser and said that they needed to change the way they presented that information, and they have done so.

The CHAIR — So that is acting as an advocate in a good way for that particular investor?

Mr MOORE — That is correct, yes.

The CHAIR — But in terms of the research that the association does, do you then put that into a data system so that you are able to analyse the frequency of that kind of practice and what the outcome was? What I am obviously driving at is whether or not we could have a conversation about that data, if you do have it.

Mr MOORE — No, we do not have it in an electronic system at this stage.

The CHAIR — But you do put it together?

Mr MOORE — Yes.

Mr CLARK — Just following on from the Chair’s question, perhaps you could help us understand where the PIAA is coming from. Can you tell us how many full members you have got, how many associate members you have got and how you fund your activities?

Mr MOORE — We have a board of five people, and we have four members of the association. We have over 1000 subscribers, who are investors who subscribe to the association and obtain information, and we have about 25 associate members at this point. It is probably a bit more than that — around about 25 to 30 associate members.

Mr CLARK — In terms of how you are able to carry on your work, do you fund yourself through memberships or other — —

Mr MOORE — Through associate members. Associate members pay a fee every year, \$550, to join the association. We have sponsorships, and when we rate the developments we charge developers to have those developments rated. So that is how the association is funded at this point.

Mrs MADDIGAN — I notice in the submission you gave, I suppose, details of what you would think is appropriate for someone to be an accredited property investment adviser. Who would be responsible for that

accreditation? Would you see your association or a professional association or the government or some other regulatory body responsible for that?

Mr MOORE — It could be anybody. It could be a separate regulatory body, but we are developing an investment advice framework at the moment. Essentially it is an audit process, so investment advisers would have to have that sales PS146 and have been tested to be able to provide advice in that framework, and then have some sort of indemnity insurance. In order for them to obtain indemnity insurance, they would have to be audited on those processes on an annual basis, so it could be simply a matter of the insurance process being the regulatory standard.

Mr DONNELLAN — Say I am an investor and I have \$200 000 and I go to one of the associate members of the organisation. Is it a fee for service based on 0.2 per cent of gross market value — I may be able to buy a flat for \$200 000 — and what sort of advice is provided? Is it historical data, or maybe how units in, say, St Kilda Road have grown, or in a sense what would an associate member provide an investor who is looking to buy property, and how would you charge them?

Mr MOORE — The sort of framework that has been developed for associate members to provide advice involves taking that due diligence information and then assessing that in terms of an investment, so you do a property investment analysis based on the audited information. That way at least the advice that is being provided by the associate member, for instance, is based on something that is accurate and that has been verified and audited. The problem we have had in the past is that, let us say, capital growth statistics have been taken from all over the place, and hence to encourage people to purchase a property outlandish capital growth statistics have been advised and never verified. In one case we had a situation where the developer advised that they had a 45 per cent annual growth for the last 10 years.

Mr DONNELLAN — That is pretty good. Everyone in Australia would want in on it.

Mr MOORE — I said I wanted to buy!

Mr DONNELLAN — Would they charge a fee?

Mr MOORE — They do charge a fee, and that varies amongst different members, depending on what sorts of services they provide. I might say that some of them do sell property as well. We do not mind that; what we want is disclosure. We want to know exactly what they are doing and what they are providing for their money.

Mr DONNELLAN — So, say they were both providing investment advice on one side to a particular person and they were involved in, say, a St Kilda Road development and they were selling those, they would, firstly, disclose the commission they would receive on the sale of that property, if they were advising me, a \$200 000 investor — which would not get me into St Kilda Road, but anyway — and then they would charge me a fee for service for the advice. Is that right?

Mr MOORE — They could do that, but as long as it is disclosed it is not a problem. If the investor makes the choice then, it is then a matter of what benefit they are getting. If the adviser advises within the framework and advises them they are actually going to make some money and is able to negotiate a discount, then there has to be an assessment of what the value of that is. That is the way property works. I mean, you can buy property at a huge discount, and then some of that commission might go to the adviser that has actually negotiated that discount, as you would realise.

The CHAIR — In your submission you are critical of the way that current regulations are implemented, that is, broadly the consumer affairs regime that is in operation at the moment.

Mr MOORE — Sure.

The CHAIR — Could you talk us to us a bit about the nature of that problem and expand on that a bit? Are you saying that Consumer Affairs Victoria, for example, or consumer affairs at the Commonwealth level, the agencies at that level, are not doing what the law and the regulations require them or enable them to do?

Mr MOORE — I think the first thing is that it is difficult for an investor to take action by themselves. It is an intimidating task to go to an agency and to complain and then get the supporting evidence. There is no organisation at the moment that will actually help them to do that. We hope to be able to do that in that sense, but

again, to mount the case for a particular situation, is, firstly, quite intimidating, and secondly, it costs money. The sorts of situations that have occurred have been when a developer, for instance, as I said before, reneges on his sales contract, and investors are left — you know, it is an opportunity cost for them — and often they have paid deposit bonds, and there is no recourse for them. There is really no situation, although I know that under section 52 of the Trade Practices Act you can go down that path and make complaints to the ACCC or the Office of Fair Trading, but I do not think it is well known the procedures that need to be undertaken to do that, and also it seems that it is hard to do.

The CHAIR — So do you think government should advertise the regulations more forcefully, and do you think that government should be taking a more proactive role, or behaving more strongly in relation to its own regulations?

Mr MOORE — I am not sure that that is going to be the answer.

The CHAIR — No, it is not the answer, I am just talking about the situation as it is at the moment.

Mr MOORE — Yes. I think making it more accessible would help, and allowing people to understand what the process is would certainly help.

Mrs MADDIGAN — You say in your submission in the section on investor education — the bit about attendance at seminars:

Attendance at seminars provides investors with an independent assessment of the information provided. Associate members invite a PIAA representative to provide an independent assessment of the information provided. Many ask PIAA to audit the information prior to running the seminar.

Can you tell me a bit about that, how it operates, and in fact if you put this sort of information feedback from your members on your website?

Mr MOORE — Yes, we do. If a development company or an educational company that wants to sell property wants to educate people as well and they advertise that, we will go through and assess the information they are providing and assess whether it is correct or complete, and all the information that is required to make it fair. In one particular case we have had a lease-back contract assessed as well. We ran it past the investors to assess whether that was okay, because they thought it was too good to be true. It was a 10-year lease back; we have assessed that as well. We would say, ‘Yes, that information is okay and can be presented in that way’.

Mrs MADDIGAN — Would it extend to such things as these sort of ads for property seminars et cetera, that you would assess and give your members advice on whether they were valid or not?

Mr MOORE — It could extend to that.

Mrs MADDIGAN — But it has not so far.

Mr MOORE — That is right, yes.

Mrs MADDIGAN — Thanks.

The CHAIR — You said in your submission that the government should publish the data out of property sales.

Mr MOORE — Yes.

The CHAIR — Could you just talk a little bit about what data is available now and how you think if there was a full disclosure of that data that would help property investors?

Mr MOORE — I am not sure of the laws here in Victoria but in New South Wales what tends to happen is that real estate agents will advertise a property for sale at auction and they will say it is from a certain figure. Invariably what happens is the investor or the purchaser will undertake all their due diligence — some sort of pest inspection, building inspection — and they will spend money on that in the expectation that the property is going for the figure that it is originally advertised, or around that. What has been happening is the properties have been going for much, much higher, so there have been a lot of disgruntled investors. What we are saying is to eliminate

that either you spend money on a valuation, because that gives you an accurate idea of what the property is going to be worth before you go into it — in that situation most of them complain that the cost of a valuation is too high when they may not get the property. The availability of sales history information or previous sales or sales in the area will enable them to do an assessment of a reasonable price, as the agent would.

The CHAIR — Would you include in that private sales?

Mr MOORE — Yes.

The CHAIR — As well as auctions?

Mr MOORE — Yes.

The CHAIR — So you do not think any kind of privacy consideration should attain there?

Mr MOORE — I think the benefits of transparency are far greater than the situation with privacy.

The CHAIR — How might that be made available to the public?

Mr MOORE — I know some government departments — the land titles office in Sydney and down here, I think, the lands department — make available information to the law community, settlements and — —

Mr DONNELLAN — All of us have to pay stamp duty on the purchase of a property. When it gets to the State Revenue Office, or whatever the New South Wales equivalent of that is, sure as God made little pigs they have got the information because we have to pay the stamp duty, which everyone has a gripe about. At the end of day it does reside with the government, probably at the end of the day some months after the sale — I would imagine two or three months.

Mr MOORE — That sales information is available anyway — you can pay for it. All we are saying is it should be freely made available.

Mrs MADDIGAN — You did talk before about checking through contracts, particularly the lease-back one. Have you been involved in any sort of legal action on behalf of your members or any sort of, I suppose, conciliation or mediation on behalf of them?

Mr MOORE — We are in the throes of undertaking some action against a developer in Queensland. Actually it is a development in Queensland that is run out of New South Wales. We are doing that in conjunction with a solicitor who is working for that group.

Mrs MADDIGAN — Would that be based on incorrect property investment advice or a different sort of issue?

Mr MOORE — In this situation it is more unconscionable conduct.

Mrs MADDIGAN — Okay. Would your members see you as a reference point or the sort of body that would mediate on their behalf?

Mr MOORE — I think it is not widely known that we do do that but the questions they ask certainly lead them to believe that we would do that. We do not have the funds to pursue a lot of those things, but the fact that we have certain weight with developers — we advertise properties that are rated on the website, we have over 3000 articles on the website, we have a wide readership of that site as well, and we do news releases that are taken up quite often — it is possible that those sort of things can have a major impact.

Mrs MADDIGAN — Do you have to be a member of your association to get access to your website?

Mr MOORE — No, it is free to access.

Mr CLARK — If I could just come back to this question of availability of information. As Luke mentioned earlier, the data goes to the State Revenue Office and certainly here in Victoria it goes from there through to the Valuer-General and sometime down the track the Valuer-General publishes at least an aggregated-level report. Do you have any observations on how responsive the Valuer-General and its equivalents

are in various states of Australia in terms of timeliness and range of information being provided? You refer to the fact that charges are being made for it and it does seem to be that that is part of the problem, that it is regarded as a proprietary product and people are going to make a dollar out of selling that data. Can you point us to a jurisdiction which you think is doing it better than others in terms of making information on property sales publicly available?

Mr MOORE — I think the fundamental problem is that the time it takes from purchase to settlement means the data is going to be delayed. I do not think any state has really sorted that one out. I know there are some companies that provide up-to-date data. If it was an issue of those companies seeing this as competition — they collect their information from real estate agents at the source so that information is much more current. However, the information that is provided two or three months down the track is still very valuable.

The CHAIR — But it is not that valuable to a person wanting to sell their property wanting to know at the time of the sale roughly what is going on around the area, and the real estate agent, as you said before, quoting a sale figure as lower. It does not help in that situation if there is a three or four-month lag.

Mr MOORE — If the market is moving quickly, that is true, but let us say, for instance, whether you are a vendor or an investor, that you have got that sales information available and that you have got current capital growth statistics in the area, then it is a simple matter of extrapolating that from the past sales figure to find out what it should be now.

The CHAIR — In relation to Commonwealth and state responsibilities around this area, you say in your submission that you support a national approach — and I think that is generally what people are telling us — but do you think that if a national approach is not achieved, what space would there be for Victoria to go it alone?

Mr MOORE — I think I would like to take that question on notice.

The CHAIR — So you do not think there is much — —

Mr MOORE — No, I would like to come back to you with a response.

The CHAIR — All right. Okay. Fair enough.

Mr DONNELLAN — You ought to enter politics with that answer.

The CHAIR — I think they are all the questions and we are probably done. John, thank you very much for your time and for your efforts with the submission. As I said earlier, you will receive a copy of the transcript and I am sure that Kerryn and Susan will be in contact with you — maybe about that question you took on notice! — and about other matters that may need clarification. Thank you very much.

Mr MOORE — Thank you very much for the opportunity.

Witness withdrew.