

Executive Summary

Investment in property is a long established and accepted strategy for Australians to build wealth. Heralded as a smart way to increase wealth, 'land banking' is a particular form of investment whereby an investor or company purchases a block of undeveloped land in the expectation of selling it in the future when its value has increased significantly. Investors with reputable property development companies generally purchase an off-the-plan development—a house and land package, or an apartment. Such companies may hold land until it increases in value before proceeding to the development stage. Not all schemes, however, are reputable.

In the context of this inquiry, concerns were raised about the number of Australians who have lost their investments at the hands of unscrupulous companies securing funds for highly speculative land banking schemes.

While some Australians were aware that they may have already lost their life savings, the committee is concerned that an unknown number of Australians are currently holding similar investments without realising that they may be worthless.

The committee found that inexperienced investors were persuaded to invest in risky property investments at great personal cost. In the specific cases examined during this inquiry, the areas chosen for land banking were often located on the outskirts of cities in anticipation of future urban development and rapid increases in land values. Investors were given the impression that the investment would be realisable over the short to medium term, when in fact there was little likelihood that the land would be rezoned or developed for several decades. As a result, investors were left with a share of land with little prospect of being developed and hence, unlikely to increase in value.

Although investors may still hold some limited value in property, there were land banking schemes of even greater concern involving the offer of 'options'. In this regard, the evidence shows clearly that some investors were unaware that they were purchasing an option to exercise a future purchase and had no claim on any physical asset. The committee found that they did not understand the difference between an option and a land purchase and in some cases did not have sufficient funds to exercise their option in the future. Worryingly, these types of schemes were targeted at inexperienced investors who did not have sufficient funds to purchase a property themselves and generally were not financially literate. In other words, the promoters were selling high risk investments to people who had very limited funds and little understanding of the financial arrangements into which they were entering.

It became evident to the committee that the spruikers of such schemes were able to entice vulnerable retail investors to sign up to deals without alerting them to the inherent risks of land banking in general or their particular land banking scheme.

During this inquiry, the committee became increasingly concerned about the promotion and marketing of land banking schemes associated with two companies in particular—21st Century Group and Market First. Both companies engaged in

practices prejudicial to investors' interests. The committee was particularly troubled by the spruikers of such schemes, who:

- received high commissions, with the inducement to sell the product irrespective of the investor's interests;
- took advantage of retail investors with poor levels of financial literacy and often limited funds by persuading them to invest in high risk inappropriate schemes, especially during 'wealth education' seminars—they did so by:
 - making investors feel special—offering so-called exclusive deals and privileged access to opportunities 'too good to be missed';
 - providing promotional material that wilfully underplayed risk and deceptively overstated the anticipated benefits and commercial robustness of the scheme they were promoting;
 - using endorsements from celebrities and testimonials from self-made millionaires who purportedly became wealthy using the tips and tricks taught at seminars;
 - associating their development with reputable companies, regardless of how tenuous that connection may be; and
 - employing high pressure marketing techniques at investment seminars intended to rush investors into a decision without first seeking independent advice;
- provided poor advice that runs contrary to the fundamentals of sound investment, for example advising an investor to place the majority of their funds in the one, often overvalued, asset;
- ignored the risk profile of clients and advised them to invest in risky products unlikely to deliver the promised returns;
- failed to provide investors with an accessible avenue to obtain redress (dispute resolution mechanisms) should things 'go wrong'; and
- re-surfaced in the industry under another guise, even after being exposed for unscrupulous conduct.

The committee also found that investments made in the form of 'options' are not required to be held in trust in the same way that land sales are. In such cases, the company selling the option was at liberty to spend the money raised without any regard to the interests of the investors who had provided it.

This inquiry into land banking also drew attention to the practice of investors with limited funds in superannuation using most of these funds to invest in land banking schemes through a self-managed superannuation fund (SMSF).

The problems associated with the marketing of property investment, evident in recent land banking schemes, have plagued the industry for decades. These schemes have highlighted the urgent need for reform and a much improved regulatory regime for the

provision of advice on property investment. The committee identified two ways to implement this regime:

- the Commonwealth assuming responsibility for property investment advisers; or
- strengthening provisions in the Australian Consumer law that would see the introduction of protections for retail investors mirror those for retail investors in financial products.

The committee prefers the first option. It endorses the principle that if two investment products are functionally similar, they should be regulated in the same way. In this regard, the committee considers that the functionally similar nature of advice about property and other investment types, as well as the effect of the regulatory framework for financial services on the property spruiking sector, more than justifies the extension of the Corporations Act to advice on investment property.

The extension of the Corporations Act to advice on property investment would provide the licensing, disclosure and conduct obligations the committee considers is required, and eliminate the regulatory gap between property investment advice and financial product advice. The committee recognises that there may need to be appropriate exemptions for particular services associated with property investment and adjustments to the educational and training requirements to make them more appropriate for people providing property investment.

The committee made the following recommendations. They are listed in order of priority with the most important recommendation first.

Recommendation

paragraph 8.56-8.57

The committee recommends that the government, in consultation with the states and territories, should strengthen the regulatory framework of the property investment industry to bring it into line with regulations applicable to the financial investment industry. Specific areas include:

- making the regulation of property investment advice a Commonwealth responsibility (recognising that services provided by licensed real estate agents would remain under state and territory regulation);
- inserting a definition of property investment advice into the Corporations Act and the Australian Securities and Investments Commission Act; and
- requiring that anyone providing property investment advice should hold an Australian Financial Services Licence (with appropriate exceptions).

In respect of the last recommendation, the committee suggests that the independent industry-established standards setting body for financial advisers could set the educational and training requirements for property investment advisers and the code of ethics to which they would subscribe.

Recommendation**paragraph 8.77**

Having regard to recommendation one, the committee recommends that Consumer Affairs Australia and New Zealand, in its review of the Australian Consumer Law, give serious consideration to:

- the options for reform proposed by the national review project into property spruikers;
- whether investment property advice rightly belongs under the same regime as financial products and financial advice and, if not, how consumer safeguards available to investors in financial products can be replicated for investors in property;
- measures needed to prevent property investment spruikers with demonstrably compromised integrity from continuing to operate in the business;
- introducing a licensing regime for those providing advice on property investment which would include minimum qualifications and a code of conduct to which they would subscribe; and
- increasing the penalties for misleading and deceptive conduct, including the introduction of civil penalties and criminal sanctions.

Recommendation**paragraph 8.63**

The committee recommends that Consumer Affairs Ministers consider the terms of the reference for the review of the Australian Consumer Law with a view to inserting a specific reference to advice on property investment in term of reference no. 1.

Recommendation**paragraph 6.26**

The committee recommends that state and territory governments consider requiring that moneys paid to purchase an option in a land banking scheme be held in trust consistent with the requirements for off-the-plan agreements.

Recommendation**paragraph 8.104**

The committee recommends that ASIC, the ACCC and state and territory regulators have a stronger focus on providing up-to-date and accessible information alerting consumers to risks arising from the activities of spruikers as part of their efforts to improve the financial literacy of Australians and to encourage the early reporting of concerns about property investment seminars and schemes.

Recommendation**paragraph 8.90**

The committee recommends that the Australian Government give due consideration to:

- the characteristics of investment seminars, wealth education programs and similar product sales environments when consulting with stakeholders and conducting consumer testing to rename general advice;

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- whether the general advice warning needs to be strengthened to ensure consumers are aware that general advice is not required to meet the higher regulatory obligations applying to personal advice; and
 - whether the obligations on those providing general advice should be strengthened in regard to misleading information.

Recommendation

paragraph 5.22

The committee recommends that the Victorian Legal Services Commissioner and Legal Services Board (and, where appropriate, other state and territory legal professional bodies) investigate thoroughly the conduct of lawyers involved in providing advice to investors in the land banking schemes considered in this report, as well as those lawyers who provided advice, and controlled trust accounts, for the operators of the schemes.

Recommendation

paragraph 5.23

The committee recommends that Consumer Affairs Victoria investigate whether Market First and/or other parties, including lawyers, breached the requirements in the *Sale of Land Act 1962* (Vic) in regards to off-the-plan contracts of sale for the Foscari and Veneziane developments.

