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THE SENATE

MEDIA RELEASE

Land banking—a ticking time bomb

A report tabled today by Senator Chris Ketter, chair of the powerful Economic References Committee, reveals that many Australians may be the innocent victims of unscrupulous property investment companies.

Investment in property is a long established and accepted strategy for Australians to build wealth, but not all property investment schemes are reputable. As part of its inquiry into the Scrutiny of Financial Advice, the committee investigated practices associated with land banking schemes. It found that a number of Australians have lost, or are at risk of losing their investments at the hands of unscrupulous companies securing funds for highly speculative land banking schemes.

Investors were promised luxury housing estates with architect designed homes, helipads, walking paths and BBQ areas that were detailed in innovative conceptual drawings and marketing material. However, none of the land banking schemes discussed in this report has been developed into residential housing developments. Many sites are still farmland, while some have had limited earthmoving work done producing a few mounds of rubble.

The promotion of options to purchase an interest in property was one of the more recent and concerning manifestations of wider problems in the property investment advice industry. Senator Ketter said, "It is very concerning that many Australians may not be aware that their speculative property investments could be a tragedy in the making. Let's be clear on this, not all property investments are shonky, but it is unclear whether ordinary Australians can tell the difference between a low risk and high risk investment, particularly when the property spruiker has given them highly professional materials implying that a proposed development is already in the planning phase when the reality may be that it is a piece of bush with no planning approvals."

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. It is worrying that 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. The committee was particularly troubled by the spruikers of such schemes, who:

- received high commissions (17–20 per cent or even higher), 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 enticing 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 through land banking;

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- associating their development with reputable companies, regardless of how tenuous that connection may be; and
 - employing high pressure marketing techniques intended to rush investors into a decision without first seeking independent advice;
 - provided poor advice 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, even after being exposed for unscrupulous conduct.

Encouraging investors to use self-managed superannuation funds to invest in land banking schemes, especially where a substantial proportion of the funds were invested in risky property schemes, was particularly concerning.

The overriding message is that consumers must be wary of trusting promotional material provided by spruikers and resist the pressure to sign up to a deal without first seeking independent advice.

The committee found that the scandalous conduct of self-interested spruikers must also be addressed when dealing with the problems associated with marketing property investment, which have plagued the industry for decades. The report identified two ways to implement reform and an improved regulatory regime for the provision of advice on property investment:

- 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. Given the established obligations and penalty regime under the Corporations Act, consumers would arguably be better protected if land banking schemes, and advice on property investment generally, came under this Act. Should the Australian and state and territory governments decide that investment property advice should remain under the Australian Consumer Law, then reforms are necessary to strengthen that regulatory regime as it relates to investment property and investment property schemes.

Anyone concerned about matters relating to land banking schemes should contact the Australian Securities and Investments Commission or access its *MoneySmart* website <https://www.moneysmart.gov.au/> or its site on land banking <https://www.moneysmart.gov.au/investing/investment-warnings/land-banking>

Secretariat contact:

Senate Economics References Committee: Ph: **02 6277 3540** Email: economics.sen@aph.gov.au

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

Recommendation 1**paragraph 8.56**

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 Investment 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 2**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 3**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 4**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 5**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 6**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;
- 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 7**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 8**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.