



6 August 2008

By email: christine.nigro@justice.vic.gov.au

Dr Claire Noone
Acting Director
Consumer Affairs Victoria
GPO Box 123A
Melbourne VIC 3001

Dear Dr Noone

Online Property Sales

Thank you for your invitation to Consumer Action Law Centre to make a submission to Consumer Affairs Victoria's review of the laws applying to internet property sales, in particular auctions.

Consumer Action has not received any consumer inquiries or undertaken any casework involving online property sales. We are therefore not aware of any current consumer problems in dealing with property sales online, including through online auctions, in Australia. However, we are aware that online property sales already take place overseas, for example in the United States. Thus they may become more common in Australia in the future and it might be useful to consider now whether current legal provisions applying to property sales will be effective for the online situation.

To the extent that online property sales techniques began to be used in Australia, we would expect the current protections afforded to buyers under the *Sale of Land Act 1962* (the **Act**), including Part II, would continue to apply. However, we agree that it might be prudent to consider whether there should be some amendments to the Act to ensure these protections work effectively in practice in the online property sale situation. For example, dummy or vendor bidding is already prohibited for all publicly advertised auctions, which would include online auctions, except where the auctioneer declares the bid to be a vendor bid, which again could be done online. However, it would be very difficult for potential buyers to know whether other bids were being made by legitimate bidders given that they cannot be observed in an online situation.

For this reason, new provisions may be warranted, for example it may be necessary to consider whether bidders for online auctions should be pre-registered to enable follow-up if required. It might also be worth considering whether cooling-off rights under section 31 of the Act should be extended to contracts for the sale of land by online auction, even though they do not currently apply to contracts for the sale of land by publicly advertised auction, given that online auctions may have more similarities to private sales than to

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other public auctions due to the lower visibility of other buyers and potentially lesser opportunity to inspect the property before sale.

We also note the clear scope for the use of practices from 'sharp' to misleading in situations where a consumer's ability to view a property may be limited to online viewing. Whilst there are clear elements of consumer responsibility to protect their own interests, in such a situation there is also manifest scope for practices that breach the law. Such practices should be covered by existing laws prohibiting misleading and deceptive conduct, but in our view it may be necessary to consider additional guidance as to what may be considered misleading in the online context, in particular, conduct that may be less of a concern in circumstances where consumers have the opportunity to view a property for sale in person and form their own judgments.

Should you have any questions about this letter, please contact me on 03 9670 5088.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink, appearing to read 'Nicole Rich', written in a cursive style.

Nicole Rich
Director – Policy & Campaigns