

On 29 April 2005, Richard Bobb representing the accounting bodies (i.e. *Institute of Chartered Accountants in Australia* and *CPA Australia*, in his capacity as Chairman of the *Legislation Review Board*), appeared before the *Parliamentary Joint Committee on Corporations and Financial Services*. The committee is enquiring into the property investment advice industry. The terms of reference of the committee include, amongst other things, determining the effectiveness of current laws that protect consumers from allegations that property investment advisers engage in behaviour involving failure to disclose appropriate information (including fees and commissions) and the mischaracterisation of activities as “education seminars”.

In his opening remarks, Mr Bobb informed the committee that the views of the accounting bodies are such that further research should be undertaken before any definitive conclusion can be reached on the activities, presently under review. In this respect, Mr Bobb drew the committee’s attention to the fact that *CPA Australia* is currently conducting independent research which should be available, sometime during May 2005. Mr Bobb was of the view that once that research had become available, then the findings and conclusions of *CPA Australia* could be made known to the committee, to form part

of its deliberations before any final report is issued. Mr Bobb also mentioned that there had been no clear picture of how the recent Financial Services Regulation reforms had “played out”. Mr Bobb said the accounting bodies preferred to see how effective the rules, regulating Financial Services Regulation reform, had been before offering an informed opinion on whether property investment advisers should also be the subject of government regulation.

In answering questions with regard to the prospect of regulating property investment advisers, Mr Bobb pointed out to the committee there was a need, in the first instance, to properly ascertain what was meant by the term “property investment advice”. This, Mr Bobb said, was especially so given property investment advice is provided at different levels of sophistication. By way of illustration Mr Bobb suggested investment advice might be “plain vanilla” where it is given (for example) to a young couple who might be considering the acquisition of a high-rise apartment for the first time. However, given such advice might be given by a marketing consultant retained by the property developer, it was important for such “first time” investors to better understand the nature of the relationship between the developer and the investor. For example, who is the marketing consultant? Is he or she licensed? If not, why not? Is the consultant (so-called) an agent for the developer or an independent contractor? At the other extreme, Mr Bobb surmised that property investment advice might be given by a large property investment fund holding substantial overseas property, such as the new listed *Babcock & Brown Japan Property Trust*. At this level, property investment advice is usually contained in the IPO documents, and the content is usually highly sophisticated.

Mr Bobb also drew the committee’s attention to the fact that state and territory regulatory bodies that are predominately responsible for regulating licensed property agents had not, in his opinion, properly considered the notion or effect of *conflict of interest*. In embellishing those remarks, Mr Bobb indicated property agents, are usually retained by a vendor, who pays the agent a commission on successfully introducing a purchaser to the vendor. However, property agents tended to spend most of their time with a purchaser or purchasers (rather than the principal – i.e. the vendor). In those circumstances, an agent usually tended to become a purchaser’s *confidant*, when obtaining confidential information from the purchaser. This inevitably would lead the agent to introduce the purchaser to other properties (not necessarily held by the vendor). As such, an agent could unwittingly become an agent (of limited scope) for the purchaser, thus exposing the agent to a potential conflict of interest.

Mr Bobb told the committee, in his experience, property agents usually did not always succeed in distinguishing such conflicts. This was then compounded when agents failed to isolate their activities to representing one vendor. According to Mr Bobb multiple vendor representation also potentially exposed an agent to an allegation of having further conflicts of interest.

Mr Bobb opined that the state and territory Fair Trading Offices should be doing more to ensure licenced property agents better understood these conflicts by avoiding multiple representations.