Purchasing a home is the single biggest financial commitment most Australians will make in their lifetime.

With the average home now approaching $400,000 in Melbourne - and close to half a million in Sydney - it dwarfs by ten or 15 times the next biggest financial commitment for most Australians – the family car.

It’s a commitment that most Australians will spend half their working lives paying off, and many of them will make it just once in their lives.

This places enormous responsibility on the person they put their trust in to assist them with this commitment – you, the estate agent.

Many homebuyers find this trust repaid – they get the house they want, sometimes after a great deal of effort by the estate agent, and have no reason to complain about the service they receive.

But it’s clear from complaints we receive at the ACCC, and in the recent survey by Choice magazine, that there is still a long way to go before the industry achieves best practice for its clients.

In September last year the Commission announced that we would be targeting misleading and deceptive behaviour in the property industry.

The Commission subsequently received more than 300 complaints and enquiries into our InfoCentre about property seminars, two-tier/time share property schemes, auctioneer bidding processes and general concerns about real estate representations.

It’s clear from those complaints, and very recent discussions we have had with the industry, that many in the real estate industry are ignorant of their responsibilities under the Trade Practices Act, and the role of the ACCC.

This is of particular concern, as the Commission has made it clear that real estate
practices are a priority area and we have instituted proceedings against a real estate firm in Victoria.

It appears agents don’t typically seek legal advice about their obligations under the Trade Practices Act, and nor is the Act specifically covered in real estate agents training courses.

There also appears to be some confusion in the industry, particularly in Victoria, about the powers of the ACCC and whether this conflicts with state government consumer affairs agencies and their administration of specific real estate legislation.

So tonight I’m going to talk about some of these issues, and what the Commission has been doing to tackle the major areas of concern that we have identified in the property sector

**Dummy bidding**
The practice of dummy bidding is, in the view of the Commission, completely unacceptable.

It is a practice designed simply to fleece more money out of a prospective homebuyer who is forced to bid more and more to outbid someone who has no more intention of buying the property than the letter box or the garden gnome.

Unless it is fully disclosed both at the start of the auction and at the time of the bid, the Commission considers all bidding on behalf of the vendor to be deceptive and misleading conduct.

When I first made clear the Commission’s view on dummy bidding, one prominent auctioneer accused me of undermining consumer confidence in the best auction system in the world.

I was sorely tempted to send that person a photocopy of the page in the Oxford English dictionary that defines honesty.

How can the best auction system in the world lead to outcomes where a couple are called in to negotiate with the owners, even though their final bid was $7,000 less than the winning bidder, who then vanishes?

I am pleased to say that change is now underway in many jurisdictions.

In Victoria for example, dummy bids have been outlawed, only the auctioneer is allowed to bid on behalf of the vendor, and must disclose every time they do so.

As of this month, all auctioneers in New South Wales must be registered, and only a single, disclosed vendor bid will be allowed. A similar system will operate in South Australia.

I am aware of concerns in the industry about the proscriptive nature of these new regulations, and suggestions that they may lead to anomalies such as the banning of
otherwise perfectly legitimate practices.

May I suggest that the industry has only itself to blame for these consequences. Every industry – regardless of whether they are real estate agent, phone companies or retail giants - must be sensitive to community expectations and standards.

Any industry which fails to respond to legitimate community concerns cannot complain when governments, which are sensitive at all times to the electorate, then pick up the ball and run with it.

I should point out that irrespective of the laws introduced in various states and territories, this will not in any way negate the provisions of the Trade Practices Act, nor undermine our ability to intervene when we believe there has been deceptive or misleading conduct.

While I strongly support moves by the states to clean up the auction process and outlaw dummy bids, the Commission will stand firm on the need for open and transparent processes that are not likely to mislead, and take action to enforce this where necessary.

Even if an agent believes their actions to be legal under state law, we can, and will act, when behaviour contravenes the Trade Practices Act.

Further, the Commission has made it very clear that vendors, and their friends and family who are complicit with them, may also be at risk of action under the Act if they knowingly allow dummy bids or other deceptive practices to be engaged in by their agent.

Hopefully, this will not be necessary. As a result of the publicity generated by our announcement of a crackdown on this area, we have recently seen a marked change in behaviour by real estate agents regarding dummy bids. Consumers are watchful of dummy bids, and advertising in the industry is more circumspect.

I make no excuses for using the media in this way. There is a clear public benefit generated in publicising the activities of the Commission and all Commissioners, including myself, will never be shy about using the media and public forums such as this to keep consumers informed of their rights, and businesses informed of their responsibilities, under the Act.

By educating businesses about their requirements under the Trade Practices Act, we also hope to discourage behaviour which may harm both consumers and their business.

In the case of dummy bidding, the Commission used the media to bring about behavioural change on the part of this industry in a way that benefited consumers, and, we believe, estate agents, whose reputation can only be enhanced by fair and ethical behaviour.
A good reputation is highly prized by all businesses and the bad publicity that would inevitably come with an adverse judgment against an estate agent can lower a firm’s standing and reduce sales.

But we must never seek publicity just for its own sake. When businesses come into conflict with the Commission, good reputations must only ever be harmed by their own bad business behaviour.

That is why the Commission must be circumspect where reputations might be improperly affected. But those planning unlawful behaviour should also be aware that they are putting at risk this valuable asset.

**Overquoting and underquoting**
As I mentioned earlier, another area of major concern to the Commission, and one that has generated a significant level of complaints, concerns underquoting and overquoting.

The Trade Practices Act requires adequate and appropriate disclosure at all times of all relevant price information, so that prospective buyers and the general public can make informed pricing decisions.

Advertising or quoting a property at a price significantly less than the agent’s estimated selling price, the market valuation or the vendor’s price indications constitutes a breach of the Trade Practices Act. The Act would also be breached if an agent over quotes the value of a property to a vendor in order to obtain the listing.

You are no doubt aware that the Commission instituted legal proceedings against a Victorian real estate agency in December last year, alleging that advertising for the sale of a property in Caulfield was misleading and deceptive.

It is likely you also are aware of the specifics of the case alleged by the Commission, and as the matter is before the court, I won’t repeat them here. It is sufficient to say that the issues relate to the use of an advertised dollar price guide, and whether this misrepresented:
- The price at which the vendors of the property were prepared to sell;
- The price at which the vendors of the property had instructed the agency to sell;
- The price which the company itself believed the property would be sold for; and
- The market value of the property.

Another example recently brought to the attention of the Commission concerns allegations that an agency advertised on the internet a property for sale by auction to “suit $350,000 plus buyers”, despite a reserve price of $590,000 having been set.

An example mentioned in a Choice magazine survey involved a property allegedly being passed in at auction at a price $100,000 more than the prospective buyers had been quoted by the estate agent.
How does this happen? How does an agent quote a price to a prospective buyer which he or she knows is substantially less than the vendor is prepared to accept?

In the view of the ACCC such behaviour can’t be viewed as anything other than deceptive and misleading conduct.

**Property promotions**

As you are no doubt aware, the ACCC is investigating the activities of a number of property investment ‘gurus’ for apparent misleading and deceptive conduct in their marketing of high cost courses by various means including the internet.

Already the Commission has taken proceedings in court against perhaps the highest profile property seminar operator, Henry Kaye and his National Investment Institute.

**ACCC v Henry Kaye and National Investment Institute Pty Ltd**

On 30 September 2003 the ACCC instituted proceedings in the Federal Court against Henry Kaye and National Investment Institute Pty Ltd (NII) alleging they engaged in misleading and deceptive conduct over the promotion of a ‘millionaires’ property investment strategy.

The Commission’s proceedings related to claims made in newspaper, internet and radio advertisements for their seminars, including that Mr Kaye:

- Would make 5 ordinary Australians into property millionaires in just 6 months using no money down, no debt and no equity;
- Would turn 1,000 ordinary people, who signed up for NII’s Investment Mastery Course costing over $15,000 each, into property millionaires within 12 months; and
- Could teach anyone to acquire a million dollar plus portfolio with no money down, no debt, no equity and no risk of losing money if the market were to go down.

At an initial hearing Henry Kaye and NII agreed not to publish any further advertisements promoting his ‘millionaires’ property investment strategy, pending the final outcome of the court proceedings.

NII went into liquidation on 18 February 2004 following a meeting of creditors, however the court proceedings between the ACCC and Mr Kaye continued and were heard earlier this month with the parties currently awaiting judgment.

The property market now appears to be cooling, but the ACCC remains concerned at seminars and programs which appear to be little more than an attempt to pressure unsophisticated investors into parting with huge sums for advice they have little hope of turning into the fantastic outcomes promised in the glossy brochures.

We are also aware that as the heat has been turned up on the seminars, promoters are turning to other methods to continue to lure investors such as through spam, direct marketing, telemarketing and even door-to-door.
Be assured that regardless of the method used, the ACCC will continue to keep a close eye on the property spruikers and take action to protect consumers.

I acknowledge, and thank the Real Estate Institute of Victoria for its support of the ACCC’s initiatives to crackdown on the property investment scams.

As your CEO Enzo Raimondo said in November last year:

“It is absurd that in this current environment unregulated and unqualified people are able to advise investors on real estate investment strategies and conduct real estate transactions without any property qualification or experience.”

And just to keep you completely up to date regarding our action in the property area. I can advise you that today the Commission has instituted proceedings against Anglo Estates and its directors in the Federal Court alleging that they attempted to broker a price fixing and other arrangement with the Shire of Esperance over the sale of the shire’s land.

It is also alleged that Anglo attempted to induce the shire to contravene the Act.

It is alleged that between September 2002 and February 2003 the property developer, Anglo Estates wrote to the Shire on a number of occasions and had a series on meeting with the shire, in which Anglo Estates sought an arrangement from the shire:

- That the shire would not sell vacant residential lots of land in its Flinders Estate development for less than $80,000 per lot at the time the lots first became available, with annual CPI adjustments for subsequent years; or alternatively
- That the shire would not develop and sell to the public until the end of 2010 some of its vacant residential lots in its Flinders Estate development.

The Commission has not alleged that the shire contravened the Act in any way. The Commission is seeking declarations, injunctions, pecuniary, trade practices compliance programs and costs.

**Print and electronic media outlets**

The cases I’ve outlined are just a few of a number of property promotions and seminars we are currently pursuing over misleading and deceptive advertisements, including one which was actually promoted by a television current affairs show.

Partly as a result of this incident the Commission has recently launched a major campaign to bring to account those involved in the preparation and publication of advertising content, including advertising agencies and media outlets.

People watching television, reading magazines and newspapers and listening to the radio have a right to know that the advertising in the publication or broadcast is, to the best of the publisher’s knowledge – truthful.
As such, it is the view of the ACCC that everyone involved in the preparation and broadcasting or publication of misleading and deceptive advertising is in potential breach of the Trade Practices Act.

Broadcasters and publishers that publish advertisements containing misleading or deceptive statements are breaking the law unless they are able to avail themselves of what is known as the “publisher’s defence”, that is the publisher “did not know and had no reason to suspect” that publication would contravene the Trade Practices Act.

It will be very difficult for any broadcaster or publisher to use this defence for advertising which:
- Includes extravagant claims, such as for weight loss or health products
- They have already been put on notice for by the Commission; or
- They have previously received complaints about the offending ad.

The Commission takes the view that as media outlets becoming increasingly involved in the production and scripting of advertising content, particularly in promotions or endorsements integrated into programming, they cannot abrogate their responsibility for ensuring the content is truthful.

The community depends on the advertising industry, including media outlets, to provide it with vital information to inform purchasing decisions – it has every right to expect that the industry take all reasonable efforts to maintain a high level of compliance with the Trade Practices Act.

To reinforce this I have written to newspaper publishers and broadcasting licensees to advise them of their obligations and to alert them to ACCC’s close scrutiny of these issues.

**Compliance pyramid (or sliding scale)**

Now that long list of cases I’ve just mentioned may leave you with the impression that the ACCC’s first response to every problem is to litigate.

It is not.

When it comes to enforcing the Trade Practices Act, the Commission operates a sliding scale, or what we sometimes refer to as the compliance pyramid.

Our belief is that it is eminently more sensible to have business comply with the Act in the first place, instead of having them act in a way that does damage to both consumers and the business, and then try to undo the damage later.

So, to this end the base of the pyramid is education, advice and persuasion. – the sort of thing I referred to earlier with regard to publicity and behaviour change.

In addition to using the media, the ACCC distributes around 800,000 copies of publications each year, many of them targeted directly at specific businesses.

Our Internet site also provides an easy source of information on virtually every aspect of the ACCC’s activities.
**Corporate compliance strategies and culture**

But all the education and advice in the world is of little value if there is no compliance culture in place within a business – whether it’s because the business lacks the willingness to comply with the Act in the first place, often as a result of an attitude flowing from senior management, or because of a fundamental failure in its systems.

When enforcement is required - the sharp end of the pyramid - our policy, at all times, is to achieve very quick results which avoids or minimises consumer harm in the longer term, and brings about restitution to consumers when possible.

We issue court proceedings when we believe they will be effective in bringing about a quick result. If a company finds it is at the sharp end of one of the Commission’s enforcement activities, it can expect quick, tough, unrelenting court proceedings designed to bring about the right result for Australian consumers.

As part of achieving an industry-wide culture of best practice we work with, and encourage, industry sectors to develop voluntary self-regulation schemes.

Industry self-regulation is NOT a substitute for compliance with the Act, nor do such schemes in any way act as a bar on the ACCC taking enforcement action. Rather, they are about putting in place rules and standards of best practices.

I’m pleased to say the real estate sector is working with the ACCC to better inform its members about the requirement of the Trade Practices Act in at least two ways.

**Fair and Square**

First, the ACCC’s real estate guide to trade practices issues, “Fair and Square”, one of the ACCC’s more popular publications, was prepared in consultation with the Real Estate Institute of Australia.

Electronic copies are available at no cost from both the ACCC’s and the REIA’s website.

As with all ACCC information, this guide is reviewed on a regular basis. The ACCC and the REIA have recently commenced the review process on this guide.

**REIA guidelines for ACCC issues with real estate marketing and the TPA**

Secondly, the ACCC has also provided the REIA with a list of the top issues of concern to the ACCC in the real estate sector.

This list identifies issues already discussed this evening such as dummy bidding and price representations as well as a number of other issues such as alteration of photographs used to advertise properties.

The REIA is working with the ACCC to develop guidelines on how to address these concerns. It has also identified separate concerns of its own.
Conclusion
As Chairman of the Australian Competition and Consumer Commission I am committed to promoting a fair, competitive environment in which all businesses – big, medium and small – have the opportunity to survive and thrive.

It is also my job to protect consumers against misleading and deceptive conduct.

I hope my comments tonight have clarified some of the areas of concern the ACCC continues to have with the real estate sector, but also how we want to work with you to deal with those concerns and improve the standing of your industry.

Any company that takes a view that says “well, we’ll teach the ACCC a lesson not to take on a company of our size” will quickly learn that ACCC has the resources and the determination to take it on.

But a company, or industry association that comes to the Commission and says “we’ve got a problem and we’d like you to help us fix the problem quickly”, I can assure you, you will find us very receptive.

Thank You