

**McCALLUM DONOVAN SWEENEY**  
Barristers & Solicitors

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**Facsimile & E-mail Transmission**

**Date** 5 April 2007

**Attention To Company** Mr Liam Stewart  
The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
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DIXON ACT 2602

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**Your ref** C2007/84

**From** Paul Donovan

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**Our ref** PGD/999065

**Pages Sent** 3 (including this page)

Dear Sir

**Application for Authorisation by Real Estate Institute of Western Australia (Inc) ("REIWA")**

1. I refer to the draft determination in this matter that has been published by the Commission on 21 March 2007.
2. I have been instructed by REIWA that it does not wish to request that a pre-decision conference be convened and does not wish to provide any further written submission, save for the comments made below.

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2.

3. I confirm the advice that I provided to your Liam Stewart when I spoke with him by telephone on 21 March 2007, immediately prior to the publication of the draft determination. I advised Mr Stewart that an error was contained in the written submissions lodged by REIWA with the formal application for authorisation on 22 December 2006. In particular, the assertion in paragraphs 1.9 and 1.10 that the terms of all of the Standard Exclusive Agency Agreements for which authorisation is now sought only varied from the documents with respect to which authorisation was provided in 2002 in the manner specifically noted in the submissions and the attached documents was incorrect. In the case of the Internet Listing Service Selling Agency Agreement – Residential, the Exclusive Selling Agency Agreement for Commercial and Industrial Property and the Exclusive Appointment of Agent to Sell/Offer to Sell a Business it has become apparent to me shortly before my telephone conversation with Mr Stewart that at some time following the granting of the initial authorisation to REIWA in 2002 some small changes were made to the formatting and terms of the standard conditions contained in those forms. The error appears to have arisen at the time that some of these forms were finalised for printing. The wording of some of the standard clauses that appear in the forms identified above has been slightly altered to match the wording used in the Residential Exclusive Agency Selling Agreement (which is the most common form used by REIWA agents).
4. The only change of significance is that the Exclusive Appointment of Agent to Sell/Offer to Sell a Business is expressed such that an agent is only entitled to a fee when a sale of land had occurred (as distinct from the sale of land and/or a business occurring, as was the case in the form originally authorised by the ACCC in 2002). This inadvertent error has now been remedied and the form that will be provided to agents in the future by REIWA will entitle agents to a commission upon the sale of the land and/or the business the subject of the authority.
5. The other changes made to the identified documents are not of any great substance and REIWA does not consider it necessary to change those clauses back to the wording used in 2002.
6. I should note that all of the clauses required to be included in these forms as a condition of the authorisation that was provided by the Commission in 2002 remain in the forms concerned.
7. Should you require any further information about the differences between the forms authorised in 2002 and the forms attached to the submissions on 22 December 2006 please do not hesitate to contact me.
8. In any event, REIWA notes that in paragraph 11.3 of the draft determination the Commission has stated:

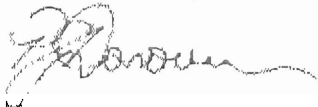
*The ACCC notes that while REIWA appears to have sought authorisation for the standard form contracts themselves, it is the agreement between REIWA members to make available for use the standard forms which is the relevant conduct that may raise concerns under the TPA. As a result, any authorisation granted would be for the agreement by REIWA members to make those standard form documents available for use rather than for the actual documents themselves or the contracts signed between agents and clients.*

3.

9. It is implicit in the Commission's finding on this point that the Commission does not believe that the clauses of the documents themselves raise any concerns under the *Trade Practices Act, 1974* ("the TPA") and, consequently, do not give rise to any competition concerns under Part IV of the TPA about the exclusive nature of the agreements or any other contents of the documents. Nevertheless, as part of REIWA's desire to maintain an open and constructive dialog with the Commission, REIWA proposes to continue to advise the Commission in the future of any changes that it makes to these documents from the forms attached to the submissions made on 22 December 2006.
10. REIWA and I look forward to receiving your further advice should the Commission receive any additional submissions from any third parties arising out of the draft determination. Otherwise, we will await the publication of the Commission's final determination.

Should you have any queries or require any further information please do not hesitate to contact me.

Yours sincerely



**P G Donovan**

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