


Property advice: the scandal the royal commission missed

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We now have the first report from royal commission into banking and it's very good to see a process of reform get under way. But while the commission has covered a lot, every day thousands of unsuspecting Australians are being given conflicted property investment advice, and the government isn't doing a thing about it.

The perverse application of the law dictates that if you want to recommend someone invest \$1000 into shares you must, by law, fulfil many compliance and regulatory obligations such as being an authorised representative of an Australian Finance Service licensee, act in the client's best interest, meet continual education standards and so on.

However, if you want to advise someone to invest \$1 million into property, you don't need any specific licences or registration.

That is because direct property does not meet the definition of a "security" under the Corporations Act and therefore is not regulated by ASIC.

You need a licence or registration to provide advice on shares, insurance, mortgages, taxation but not property investment.

In reality, the property investment advice industry is not that different to what the managed fund industry was 10 to 20 years ago. It is occupied by lots of "advisers" with vested interests. In many situations, property "sales" is often dressed up as property "advice".

Over the past decade I have seen an emergence of businesses that market themselves as investment property advisers. They advertise they will help you build a successful property investment portfolio and become independently wealthy. However, in reality, all they are doing is selling newly developed property for substantial commissions and kickbacks.

I recall reading a prospectus of one such business a few years ago and about 50 per cent of its revenue was generated from property sales commissions. However, from the outside (i.e. its website and marketing) you would be excused for assuming it was a reputable financial planning firm. The commissions paid by developers can be significant.

Over the years, my firm has been offered commissions in the order of \$10,000 to \$30,000 per property. Of course, we have always strongly rejected such approaches.

For the government to protect Australians, it must ensure the whole advice industry is a level playing field. We should stop defining the advice industry by product (i.e. shares, insurance or property) and regard it as one service. All people providing investment advice should be subject to the same licensing regime, standard of care, professionalism and consumer protection.

The government can make this change by amending the Corporations Act so that the definition of “security” includes direct property. In fact, the Senate Committee inquiry into the Scrutiny of Financial Advice made this recommendation to the government in February 2016 in its interim report (the inquiry has since lapsed).

At the end of this year, NSW will ban real estate agents from paying referral fees and commissions to any persons that are not licensed real estate agents (e.g. property investment advisers, mortgage brokers and the like). This is an excellent reform and provides consumers with better protection, but more needs to be done. Surely, the government will now learn from the mistakes it has made in regulating banking, insurance and superannuation. It must take a more proactive regulatory approach with property investing advice.

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