

30 April 2010

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JM;rp

Mr David Green  
Commissioner for Consumer Affairs  
Level 2, Chesser House  
91-97 Grenfell Street  
ADELAIDE SA 5000

Dear Commissioner

### **Review of Parts 4 and 4A of the Land and Business (Sale and Conveyancing) Act 1994**

I refer to your letter of 26 March 2010 and thank you for inviting the Society to participate in a review of the reforms introduced by the *Statutes Amendment and Repeal (Real Estate Industry Reform) Act* which relate to the way properties are advertised and sold, the way consumers engage the services of an agent and the way auctions are conducted (see Parts 4 and 4A of the *Land and Business (Sale and Conveyancing Act) 1994*). The matter has been considered by the Society's Property Committee and accordingly we provide the following comments

#### **1. Section 24B and regulation 16C - Financial and investment advice / Form R7**

There is currently no definition of what constitutes "financial or investment advice", which we understand is causing great angst among Agents. In addition, the section should probably be limited to advice given to the Agent's client or prospective client as opposed to general members of the public who are inquiring about the land or business that the Agent is engaged to sell. It is not clear why the Agent should have to give out a Form R7 each time it, for example, advises a potential purchaser what the aggregate net rent payable at the property is.

#### **2. Section 24F(2) - Agent not to act for both purchaser and vendor**

One interpretation of section 24F(2) is that an Agent will be in breach of this section where it acts for either the Vendor or Purchaser in the sale of Land "A" and before settlement enters into agreements to act for the other party in the unrelated sale or purchase of Land "B". This could be overly restrictive and harsh, especially in commercial transactions where there can be long settlement periods. Assuming this situation is not intended by the parliament, we suggest that the section be amended to clarify this.

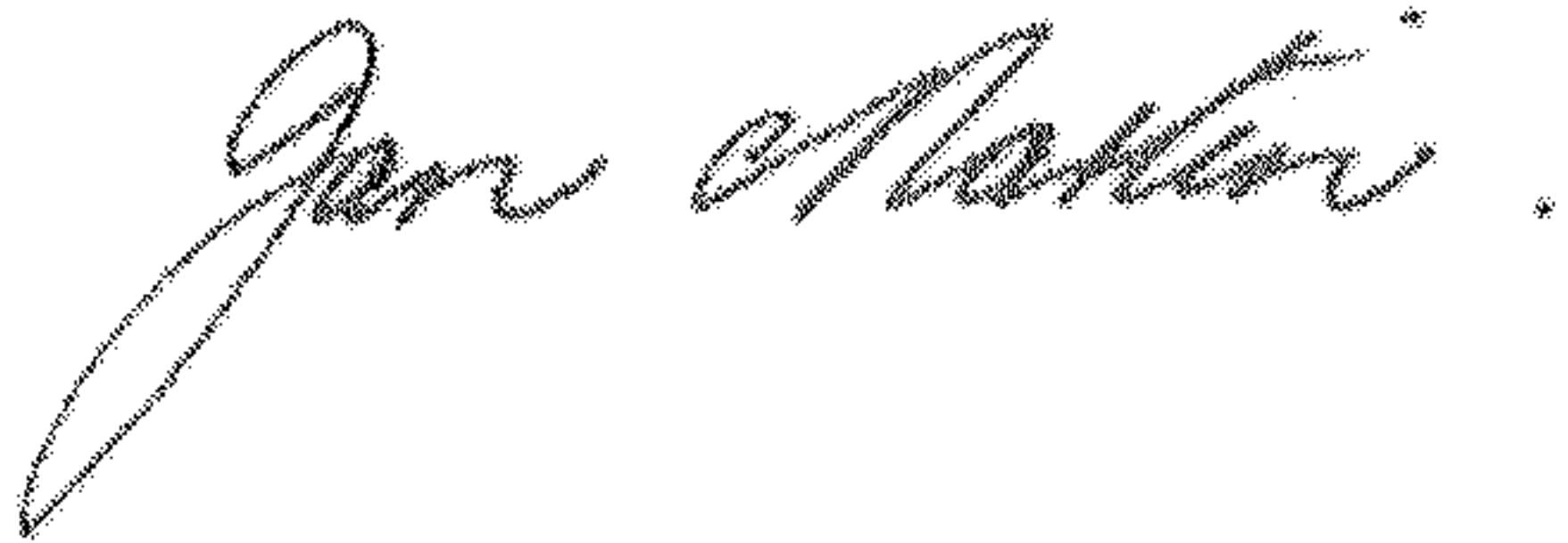
#### **3. Section 24G(7)(c) - Restriction on obtaining beneficial interest**

In our view, this subsection prevents a Vendor's Agent from being granted the management rights for the land post settlement and effectively forces the management of a property to change hands every time the land is sold. For example, if Knight Frank manage Westpac House and are in the

future engaged by the Vendor to sell this building then they can't submit a tender to the Purchaser to be appointed to manage the building post settlement. Once the Sale Contract is signed and becomes unconditional, it is not clear what protection the Vendor needs from the Agent submitting its tender to the Purchaser to manage the property post settlement.

I trust these comments are of assistance to you. Please do not hesitate to contact me, should you require any further information.

Yours sincerely

A handwritten signature in cursive script that reads "Jan Martin".

Jan Martin  
**EXECUTIVE DIRECTOR**