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Dr Elizabeth Lanyon  
Director Policy and Corporate Services  
Department of Justice and Regulation  
Level 17, 121 Exhibition Street  
MELBOURNE VIC 3000

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Dear Dr Lanyon

**RE: Proposed amendments to the *Sale of Land Act 1962***

May I thank you for the opportunity to comment further on the proposed amendments to the *Sale of Land Act 1962*.

As you are aware, the Real Estate Institute of Victoria (REIV) has provided detailed comments in our previous submissions, the most recent of which was dated May 2016.

Our position regarding this proposed Bill remains consistent with those submissions.

To elucidate, our concerns relate to **Section 12: Offence to induce any person to buy any land fraudulently conceal material facts**.

It is currently an offence under Section 12(d) of the Sale of Land Act for a person to, with the intention of inducing any person to buy any land, fraudulently conceal any material facts.

Clause 14 amends the section 12(d) of the Sale of Lands Act to remove reference to fraudulent concealment and lift the maximum penalty for any offence against section 12 from 50 penalty units to 120 penalty units.

Clause 15 provides that the Director, Consumer Affairs Victoria (CAV) may make guidelines to clarify what a 'material fact' includes for the purposes of the (amended) offence in section 12 (d). For example, a material fact could include a property's history as the scene of a homicide.

The Director CAV may make guidelines to clarify what 'material facts' include.

In the absence of sighting these guidelines or a commitment to working together on their establishment, REIV cannot support this amendment. We believe such an amendment would be unworkable and could result in vendors and estate agents being unnecessarily penalised.

Using your own example, a murder in the house: What lengths does an agent have to go to? What's a reasonable period of time to make such inquiries?

Where do you need to go to make such inquiries? How far back do you go? Is it relevant that a murder was committed in the 1890s? What are the protections for an agent who has made reasonable enquiries and what are they? How does this sit with agent's obligations under Professional Conduct Regulations as they relate to confidentiality? What about "Privacy"?

To be clear, REIV strongly supports existing deterrents to misleading and deceptive conduct, both at common law and wider statutes which we consider provide adequate protection for consumers and strike a fair balance between competing interests. We note that you received similar advice from the Law Institute of Victoria in their submission.

REIV would be pleased to work with your officers to achieve your stated objectives as they relate to material facts and fraudulent conduct. However, the proposed amendment as currently crafted without the Director's guidelines has the potential to confuse not only estate agents but the public at large (who after-all are also caught by these provisions) and therefore have a range of unintended consequences.

On this basis we respectfully request that you do not proceed with this proposed amendment.

In relation to the other matters in the proposed Bill, REIV's position is as follows:

**Sunset clauses:** Our submission called for greater clarification of sunset clause timeframes to prevent the cancellation of off the plan contracts and for greater flexibility such that contracts can be extended and/or altered by mutual agreement.

**Terms contracts:** REIV's position on this matter is that there is a continuing place for terms contracts and that while predominately used for rural and commercial land, they can offer residential buyers an alternative method of entry to the property market, especially in circumstances where parents may want to provide their children with an alternative to finance at commercial rates. REIV supports current restrictions being expanded to include debt that is not linked to the property which would offer buyers further protection. REIV also recommends that consideration being given to treating these contracts as financial products which require prior approval by ASIC and require 'brokers' to hold an Australian financial services license.

Finally, we support the proposed amendments in relation to "Rent to Buy" and ANZAC Day trading restrictions to 1pm.

We hope this clarifies REIV's position and we look forward to working with you on further amendments to this Act. Please do not hesitate to contact me should you require further clarification.

Yours sincerely



**Gil King**  
**REIV Chief Executive Officer**

Cc Dr Elizabeth Lanyon