

AUCTION DECEPTION

Under-quoting is the curse of the home buyer. It's rife and illegal — yet the law sits on its hands

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IT IS supposed to keep real estate agencies honest, but the state's consumer watchdog has failed to prosecute a single agent for the widespread illegal practice of underquoting.

More than two years after the State Government trumpeted new laws to crack down on dummy bidding and underquoting, the legislation has proved to be a toothless tiger, with Consumer Affairs Victoria (CAV) being criticised for failing to confront the problem.

One property source estimates underquoting is rife in up to 80 per cent of advertising in the residential market.

Leading real estate agent Greg Hocking, the director of Hocking Stuart, agrees there is "blatant" abuse of the law and says glaring examples should be "singled out".

"I'm not saying we (at Hocking Stuart) are blameless either," he said. "Some of our guys still fall foul of this, and we're into them. It's our responsibility to do it and I speak to the individuals involved."

In one of the most blatant recent examples (not sold by Hocking), a Glen Iris property quoted over three successive weeks of an auction campaign at \$580,000, \$620,000 and finally \$680,000, sold on the day for \$908,000.

The incident, four months ago, was reported in *The Sunday Age* and brought to the attention of CAV. The CAV is yet to reveal the results of any investigation.

The Sunday Age this week put a series of questions to CAV director David Cousins, who passed them on to strategic communications adviser Margaret Bird.

She denied the watchdog was not doing enough to stop underquoting.

The CAV said it received 60 written complaints and more than 300 telephone inquiries about underquoting and misleading advertising in respect to price over the past financial year.

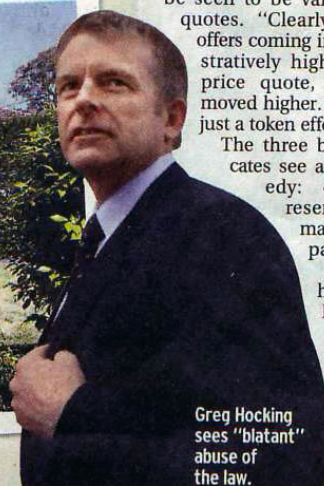
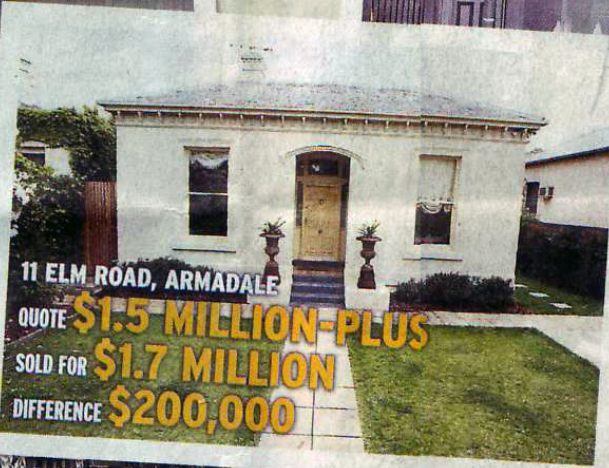
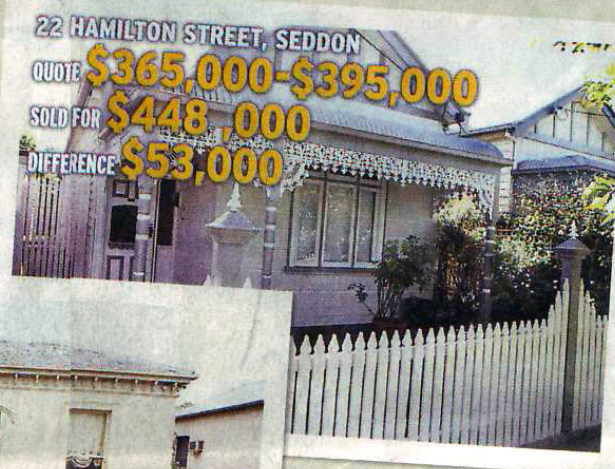
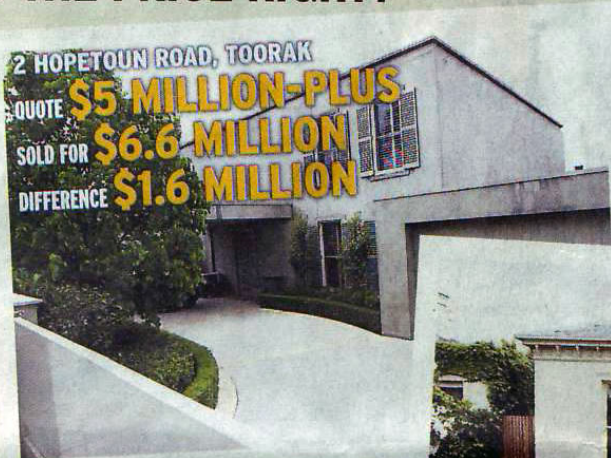
Ms Bird claimed the new laws, introduced on February 1, 2004 had had a significant impact on underquoting.

Under the legislation, agents have to provide a signed authority outlining either a single selling price or a price range within 10 per cent of the estimated selling price.

Agents are allowed to advertise a price above this range to market the property. But advertising below is considered underquoting, attracting fines of \$20,000.

"CAV collects data comparing advertised prices with sales prices and follows up with agents where there are discrepancies," Ms Bird said. "These assess-

IS THE PRICE RIGHT?



were conducted which resulted in further documentation being produced for CAV."

The escape clause is what makes the legislation a paper tiger, property sources say.

According to CAV, the vendor's asking price can be significantly higher than the agent's estimate of the selling price — and the agent advertises the property for sale based on his estimate.

However, the vendor has no obligation to follow the agent's quote when setting the reserve on the day of the auction.

Greg Hocking also blamed apathetic consumers. "The public are the eyes and ears of the regulators — they should be demanding action from the regulators. It was pretty much the public backlash that got the Government to introduce the legislation in the first place."

He added that agents had to be seen to be validating their quotes. "Clearly, when the offers coming in are demonstratively higher than the price quote, it must be moved higher. Often there's just a token effort."

The three buyer's advocates see a simple remedy: declare the reserve in the marketing campaign.

"What's to hide?" said Mr Koren. "It has to be set in concrete."

Real Estate Institute of Victoria chief Enzo Raimondo

rejected claims that underquoting was a problem. There had been just five complaints lodged in September and six in August, he said.

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ments have found that there is a generally high level of compliance in the industry with the new underquoting laws."

But Australian Competition and Consumer Commission (ACCC) chairman Graeme Samuel was more forthcoming.

He said the practice of underquoting — where real estate agents quote a much lower price for a house going to auction than what the seller really wants — was a major concern.

"I would be the last person to suggest there are no rogues in the (real estate) industry," Mr Samuel told *The Sunday Age*.

"There are rogues in every industry, but this one produces a few more rogues who can do more harm to the public because they have direct dealings with consumers in the sale and purchase of real estate."

"In the end, we don't have the resources to go out there and inspect every auction."

The national watchdog has taken one estate agent to court for underquoting since the new laws were introduced.

Gary Peer and Associates

faced the Federal Court in a civil case, defending claims it had underquoted in advertisements for the sale of a Caulfield property in 2003. The property was passed in at auction for \$781,000, but the agency had earlier advertised it at \$600,000-plus and later at \$650,000-plus.

Following a two-day trial in April last year, the agency was found to have engaged in misleading conduct in the way it advertised the property. It was

sort of a court result," he said.

Three of the strongest critics of the State Government and CAV are Peter Rogozik, David Morrell and Christopher Koren, buyer's advocates who are at the auction coalface week after week.

"I can pick the underquotes every week," Mr Rogozik said. "I can check the quote and predict what it will sell for ... it's just rampant. The new legislation had some effect probably for the first six months. After that it was open slather."

'The public are the eyes and ears of the regulators — they should be demanding action.'

ordered to pay the ACCC's legal costs.

Mr Samuel said that under the act, the judge could not fine the company but only bring down a finding of guilt and impose an injunction to stop it from doing it again.

"The impact in that case was not significant so I've got to wonder about the value of taking court action when you get that

manager Peter Hiland wrote, in part: "Inquiries are continuing ... I expect such inquiries will be completed within the next two weeks and I shall be able to advise of the outcome shortly after that."

Two months later, on May 17, he received a second letter — it was an exact copy of the previous letter with only a date change.

In two other cases of alleged underquoting that Mr Morrell reported to ACCC, the national watchdog passed them on to CAV. "That was in April 2005," said Mr Morrell. "My client who brought the complaint has yet to be interviewed by Consumer Affairs. I've continued to badger them, at least a dozen times."

In a letter to Mr Morrell in March this year, CAV general