

# From Search to Sale: Navigating the Victorian Property Market





The Consumer Policy Research Centre (CPRC) is an independent, non-profit, consumer think-tank established by the Victorian Government in 2016.

CPRC aims to create fairer, safer and inclusive markets by undertaking research and working with leading regulators, policymakers, businesses, academics and community advocates.

### **Acknowledgements**

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CPRC acknowledges the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to land and the ongoing living cultures of Aboriginal and Torres Strait Islander Peoples across Australia.

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# Introduction

Buying a property is typically the largest purchase someone will make in their lifetime. It is also one of the most complex purchases as consumers are expected to gather and evaluate highly specialised information about properties within a limited period of time. Some factors, like the quality of a building or the experience of living in the neighbourhood cannot be fully understood until well after the purchase is made.<sup>1</sup>

Unlike many other consumer markets, most consumers participate in the property market infrequently, which means market knowledge gained can quickly become obsolete.<sup>2</sup> This makes regulatory settings around required disclosure of comprehensible and comparable information relating to price, quality and features, and conditions of sale more important to ensure consumers can make better informed decisions.

This report looks at how the process of buying a property works for Victorian consumers and explores options to make a complex purchasing process easier. It examines consumer views of and access to disclosure documents. Finally, the report explores the consequences of the current regulatory settings for consumers, including direct costs borne by consumers to obtain key disclosure documents and underquoting.

The findings are underpinned by a CPRC-commissioned survey of 500 people who purchased a home in Victoria over the last five years. Key findings include:

- Price information remains a major issue for purchasers. Victorian consumers consider the pricing of property is often unreliable, inaccurate or even misleading. 82% of home buyers want the accuracy of the Statement of Information improved, while 75% want the vendors' reserve published price well in advance of auction.
- Consumers rely on key disclosure documents (i.e. building and pest inspections) to make major decisions about properties - 11% decided not to make an offer and 13% made a lower offer due to major faults identified by these reports. 73% want vendors to provide independent building and pest report.
- The onus on buyers to obtain building and pest reports creates an unnecessary burden and cost. 17% of respondents paid for 7 or more building inspections, costing an estimated \$4,200 each before they purchased a property. This creates a direct harm where consumers buy reports for unaffordable properties due to underquoting.
- Over a quarter (27%) of Victorian property buyers believe they have experienced underquoting during their journey to buy a property, while 16% of respondents reported the vendors reserve was not within the advertised price range for the property they bought.

The Victorian Government should consider a range of reforms to make the search and choice process easier for consumers. The most useful reform would be to build on existing pricing disclosure requirements to address underquoting by requiring vendors to supply key reports.

<sup>1</sup> Housing has some "experience good" qualities, see Alex Marsh, and Kenneth Gibb. "Uncertainty, expectations and behavioural aspects of housing market choices." *Housing, Theory and Society* 28, no. 3 (2011): 225.

<sup>2</sup> *Ibid.*, 215-235.

## 10 ideas to make buying a property easier

### Better information about the price of properties

1. The Statement of Information should make reference to objective third party pricing data as well as properties of similar quality to improve the accuracy of price ranges given to consumers.
2. Vendors should publish an independent valuation of their property to inform the indicative selling price required on Statement of Information.
3. Consumer Affairs Victoria should create a free, accessible database which outlines historical vendors' reserve prices and purchase prices to provide ongoing market transparency for consumers and market monitoring for market stewards.

### Better information about the quality of properties

4. Vendors should be responsible for providing an independent building and pest inspection when a property is put on the market.

### Reducing the harm of underquoting

5. Vendors should publish their reserve price when the property is first put on the market, with any changes to the reserve made and published well in advance of auction.
6. Agents should keep records of all written offers made for a property. Records should be made available on request to Consumer Affairs Victoria to allow for easier ongoing monitoring and enforcement action against underquoting.
7. Real estate agents and representatives should be required to undertake annual continual professional development. Training should be focused on how professionals can better understand relevant laws, support diverse groups of people and provide quality service to all Victorians.

### Improving contract and Section 32 comprehension and protections for buyers

8. Consumer Affairs Victoria should undertake consumer testing and use the insights to introduce mandatory requirements to improve the readability and comprehensibility of the Section 32 key disclosure documentation.
9. Buyers should always have a right to a 3-5 day cooling off period regardless of how the property was purchased (including at auction).
10. Buyers should be able to retain a subject to finance clause regardless of how a property is purchased (including at auction).

# Methodology

This report outlines key findings from a survey of 500 consumers who bought a property in Victoria over the last five years. The survey was developed by CPRC, to explore key aspects raised in the Property Market Review consultation paper.<sup>3</sup> The survey focused on the search process rather than affordability or supply. Data collection was conducted by CPRC, using Ipsos' Digital Platform.<sup>4</sup>

## Key limitations

Due to the size of our sample and the incidence of property purchases among the broader population, our respondent sample is not representative of the broader Australian population but a random sample of Victorians who have purchased property in the last five years.



<sup>3</sup> Independent Review Panel, *Property Market Review consultation paper*, (Department of Justice and Community Safety, February 2022).

<sup>4</sup> Terms and Conditions of Ipsos' Digital Platform can be found here: <https://www.ipsos.digital/terms-and-conditions>



# The search and selection process

For many people the search process has significant costs in terms of time committed to reviewing listings and inspecting properties in-person. A smaller number of people spend significant amounts of time and money preparing to make an offer or bid on properties.

While each property search process varies from individual to individual, it typically starts with looking at a range of properties through online listing sites or directly via realtors.<sup>5</sup> Online listing sites and search tools have the potential to significantly reduce search costs. However, this depends on the ability for consumers to access all key information they need to make informed decisions as part of the search process. In Victoria, the Statement of Information must be included with the advertisement of the property online.<sup>6</sup> Online listings typically include photos with a floor plan and may include other information such as suburb demographics and sale history.

Our survey revealed a significant variation in the number of online listings reviewed by consumers. 11% of respondents reported reviewing just 1-5 listings (referred to as “shallow search”) while 10% reported they reviewed more than 100 listings online (referred to as “extensive search”) - see figure 3. Our respondents were surveyed online which may reflect higher digital access and capability, however even within our sample 5% reported not viewing any listings online.

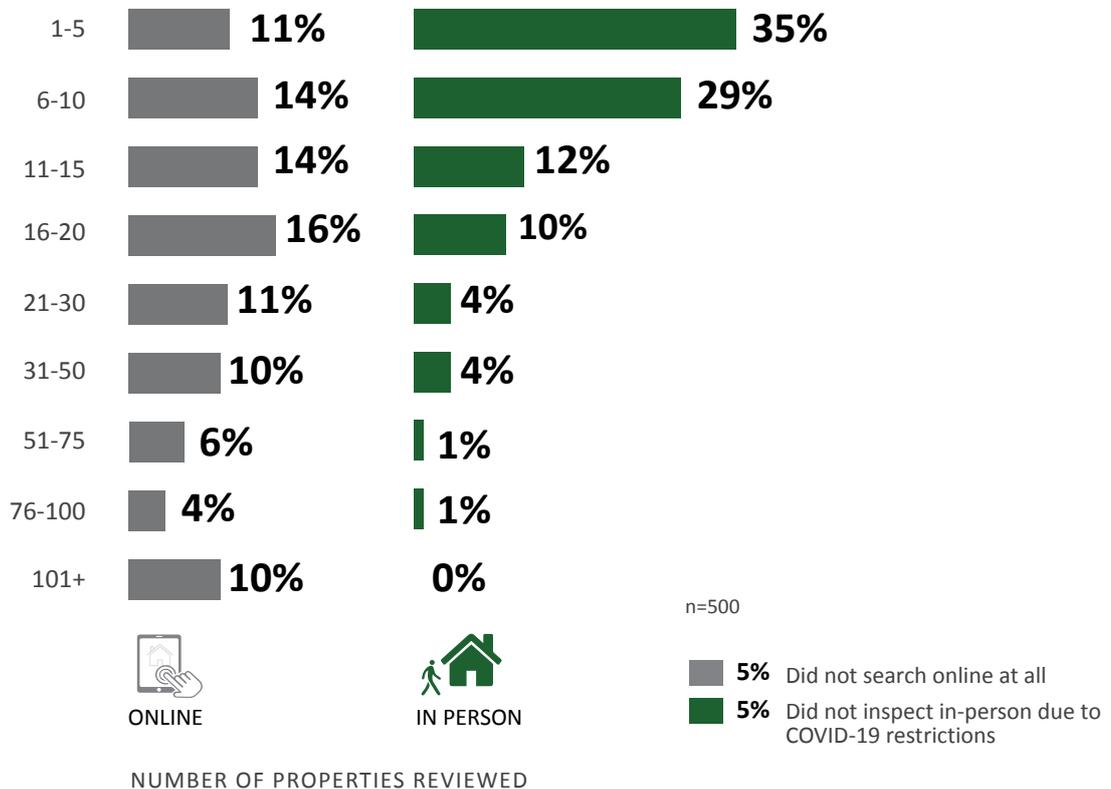
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<sup>5</sup> For a more extensive consideration of the search process see Richard Dunning, *A Typology of Housing Search Behaviour in the Owner-Occupier Sector*, (Department of Urban Studies and Planning, University of Sheffield: January 2016)

<sup>6</sup> Section 47AF of the Estate Agents Act 1980. Statement of information must also be displayed at any inspection of the property and provided by the agent or representative to a prospective purchases within 2 days on request.

FIGURE 3

### Extent of consumer search



From this initial search stage, consumers typically inspect a property in person. This inspection process is necessarily more time consuming, and our survey results highlight how consumers review fewer properties in person.

Just over a third of respondents (35%) inspected 1-5 properties and a further 29% reviewed 6-10. In comparison, approximately 2% inspected more than 50 properties. During COVID-19 restrictions, consumers were unable to inspect properties in-person, our survey data finds 5% of respondents reported they had not inspected properties for this reason.

A third distinct milestone in the search to purchase process is putting in an offer or bidding on a property at auction. At this stage of the process, consumers have narrowed down their broader choice set to a key property or properties.

Our survey found 32% put an offer or bid on one property, 30% put in an offer or bid on two properties, 21% put in an offer or bid on three properties (figure 4). As would be expected fewer consumers put in an offer or bid on significantly more properties, though 1% reported they had put offers on as many as 12 properties.

FIGURE 4

**How many properties did you make an offer or seriously consider making an offer for (e.g. registered or participated at an auction)?**



Each instance of an offer or bid can cost people significant time and money – with further in-person inspections, deliberation around preferences and purchasing additional disclosure reports.

Our findings highlight the variety of processes different consumers experience – and may suggest some consumers are more inclined to “satisfice” (determining a property is “good enough”), while others are more inclined to engage in deeper search process.<sup>7</sup> This group may also be more reflective of “preference maximisers” – seeking to both maximise their utility and ensure the house they buy more closely matches their own preferences.<sup>8</sup>

Notably, a larger proportion of people who considered a small number of properties in the search process reported a more positive experience buying a house (52% reported somewhat or very positive) compared to people who examined a large number of properties (37% reported somewhat or very positive). Research suggests “preference maximisers” may objectively end up with better outcomes, but find the choice more difficult because they engage in deeper search.<sup>9</sup> For both “satisficers” and “preference maximisers”, improving ease of access to key information, as well as accuracy and quality of disclosure may help to improve consumers search experience.

The difference in search processes also likely reflects different regions, different budgets, different property types, and different levels of competition – properties in the first home buyer price range may be significantly more sought after than those in higher brackets.

<sup>7</sup> Herbert Simon, *Models of bounded rationality*, (Cambridge, MA, MIT Press: 1982)  
<sup>8</sup> Kaeun Kim and Elizabeth G. Miller. “Vulnerable maximizers: the role of decision difficulty.” *Judgment & Decision Making* 12, no. 5 (2017).  
<sup>9</sup> Ibid

# Unreliable information about property prices

For information to be considered good quality and useful to consumers it needs to meet certain conditions – transparency, comprehensibility, and comparability.<sup>10</sup> Information that does not meet these prerequisite conditions considerably hampers the trustworthiness and usability of this information.<sup>11</sup>

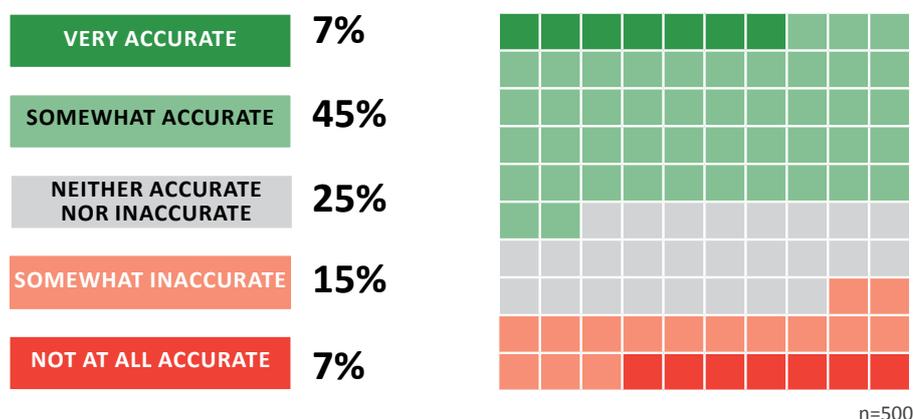
While recent reforms to house price disclosure obligations have sought to improve the accuracy and comparability of pricing, evidence from our survey indicates there’s still room for improvement. Victorian consumers consider the pricing of property is often unreliable, inaccurate or even misleading.

The primary price disclosure mechanism for consumers is the Statement of Information, which is legally required for each property advertised for sale.<sup>12</sup> The Statement of Information must include an indicative selling price or range (of no more than 10%) which must not be lower than the agents’ estimated selling price (ESP), the sellers asking price, or a price in a written offer that has already been rejected by the seller.

A significant proportion of Victorian property buyers have reservations about the accuracy of the Statement of Information. Only 7% considered the Statement of Information “very accurate” and a further 45% considered the document “somewhat accurate” (figure 5).

FIGURE 5

## How **accurate** do you think the Statement of Information is at offering a comparison of “similar properties” and their prices?



10 Andreas Oehler and Stefan Wendt, ‘Good Consumer Information: The Information Paradigm at Its (Dead) End?’, *Journal of Consumer Policy*, 10 December 2016, 183.

11 Ibid.

12 Section 47AF of the *Estate Agents Act 1980*

**“ The property was quoted \$200,000 less than the identical townhouse that sold next door less than two years ago. When we brought this to the agent’s attention, they increased the price range.**

**Respondent aged 25-34, principal-residence (not first home buyer), Metro Melbourne<sup>13</sup>**

**“ Went to an auction and was quoted \$200-\$220k. First bid \$250k, 4 active bidders over \$300k.**

**Respondent aged 35-49, principal-residence (not first home buyer), Regional Victoria**

**“ Range was \$300k below what I estimated it to go for, sold for \$350 over top end estimate.**

**Respondent aged 25-34, principal-residence (not first home buyer), Metro Melbourne**

Over a third of properties (34%) purchased by respondents sold above the top of the indicative selling price/range (figure 6).

Most people who purchased a property that sold above the indicative range, purchased via various auction mechanisms (33% vs 17% of total sample). A smaller proportion purchased off-the-plan (15% vs 21% of total sample) or via private sale (29% vs 36% of total sample).

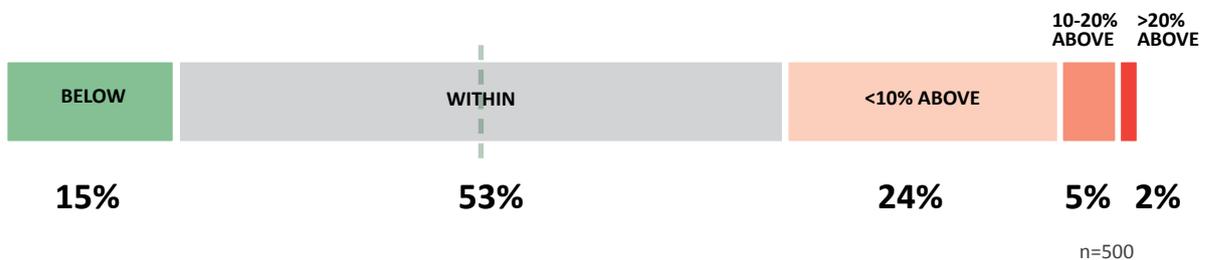
People who paid more than the indicative selling price for their property included a slightly higher proportion of first home buyers buying a principal residence (55% vs 47% of broader sample). However, the types of property (apartments vs houses) purchased by those who paid more than the indicative selling price largely aligned with the broader respondent sample, suggesting first home buyers may face more competition.

Sales results in excess of the indicative price range do not always indicate misleading conduct or underquoting. However, it is clear from the qualitative quotes gathered through our survey that buyers rely on this information to determine whether a property falls within their budget, leading to disappointment when prices surge above the top end of the range.

<sup>13</sup> Qualitative quotes used throughout are open text response to Q11a: “You experienced underquoting when you put in an offer/actively bid on property. Could you please tell us about your experience of underquoting?”

FIGURE 6

## Did the property sell **within the advertised price range**?



A real rundown property with heavy development potential was advertised at least \$100,000 less than other properties in the area. It ended up going over \$300,000 the advertised price via auction. The first bid was put in at over the advertised price. I wouldn't have bothered going if it were advertised more accurately as it wouldn't have been in my price range.

Respondent aged 25- 34, investor (first property), Metro Melbourne



In one instance a house was quoted at \$1.3-\$1.4m and ultimately sold at \$1.732m. In another the house was listed at \$1.25-1.35m and sold for \$1.74m. Out of 7 or 8 properties that we attended an auction for, none sold for anything less than 6-7% above the range.

Respondent aged 25-34, principal residence first home buyer, Metro Melbourne

The overwhelming majority (82%) of respondents considered it was “somewhat” or “very” important to improve the accuracy of advertised price/range and comparable properties as outlined on the Statement of Information, to make buying a property easier (see Q21 at appendix A).

A more accurate price/range was viewed as the most important improvement to the property market from the series of options included in our survey.

Improved accuracy might be achieved through the publication of independent valuation data. Our research found 72% of consumers considered it “somewhat” or “very” important to require the vendor to publish an independent valuation (see Q21 at appendix A), as is required by banks when providing finance.

The accuracy of the Statement of Information could be improved through reference to any material issues included in the Section 32. For example, key caveats on the property such as easements which can affect the price of the property. Accuracy could also be improved through reference to properties of similar quality. For example, by providing simplified information around the number of minor or major faults. This change would require the publication of building/pest inspections to enable this comparison.

Ongoing market transparency around pricing can be improved through the publication of both the vendors reserve price and the actual purchase price. This transparency is important to better inform buyers and sellers around expectations around property prices but would also provide the regulator with improved market monitoring.

More than three quarters of respondents (78%) considered it was “somewhat” or “very” important for free access to historic pricing information be provided (see Q21 at appendix A). This should include both reserve prices and purchase prices for ongoing transparency in the market. These reforms are also important for regulatory oversight and market stewardship, to evaluate whether disclosure mechanisms are working effectively and as intended.

## Recommendations

- 1. The Statement of Information should make reference to objective third party pricing data as well as properties of similar quality to improve the accuracy of price ranges given to consumers.**
- 2. Vendors should publish an independent valuation of their property to inform the indicative selling price required on Statement of Information.**
- 3. Consumer Affairs Victoria should create a free, accessible database which outlines vendors’ reserve prices and purchase prices to provide ongoing market transparency for consumers and market monitoring for market stewards.**

# Poor information about building quality

Across markets, distinguishing high quality from low quality products or services can be difficult - if possible at all - without clear and comparable information. While price is often considered a useful proxy, for according to the common adage “you get what you pay for”, evidence finds price can be a particularly poor indicator of quality.<sup>14</sup> Sellers typically have a better idea of the quality of their product than buyers, and so can leverage this knowledge to price a lower quality product similarly to other potentially higher quality market offerings – this is indicative of information asymmetry.<sup>15</sup>

People buying a property face a distinctly complex challenge in determining the quality of any given property and making meaningful comparisons. Few people have the qualifications to identify faults or an understanding around the risks associated with defects, which heightens the risk that a consumer will buy a property with significant structural issues or defects. Even where consumers inspect a property in person, they typically spend very little total time at the property. A survey of 1000 property owners carried out by ME Bank found that more than half of respondents spent less than an hour inspecting the property before purchase.<sup>16</sup>

The quality of property in Australia has become a focus point since the identification of flammable cladding and structural defects in hundreds of thousands of apartments across the eastern seaboard. A Griffith-Deakin study of apartments built in Victoria between 2008 and 2017 and found that 74% had defects, while a 2021 survey conducted by Australian Apartment Advocacy of over 3500 Victorian apartment owners found 50% of respondents reported that they lived in homes with building defects.<sup>17</sup> The national ME bank survey found almost two thirds of respondents discovered issues with their property after moving in, with a high incidence of construction quality issues identified post-purchase by consumers – 15% reported problems with services such as hot water and cooling systems, while 10% identified illegal building work requiring costly repairs.<sup>18</sup> Building reports, pest inspections and other disclosure documents are an important base-line protection for people buying a property.

CPRC’s research found a significant proportion of consumers did not obtain this base-line protection - approximately one in six (17%) respondents did not obtain a building report at all (figure 7). These findings suggest a significant proportion of people are making a major life purchase without adequate information about the quality of the property, putting themselves at risk of significant repair costs post-purchase.

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14 Heiner Imkamp, “Should Prices of Consumer Goods Be Better Indicators of Product Quality?” *Journal of Consumer Policy*, 41, no. 1 (2018):77-81.

15 George A. Akerlof, ‘The Market for “Lemons”: Quality Uncertainty and the Market Mechanism’, *Quarterly Journal of Economics* 84, no. 3 (August 1970): 488–500.

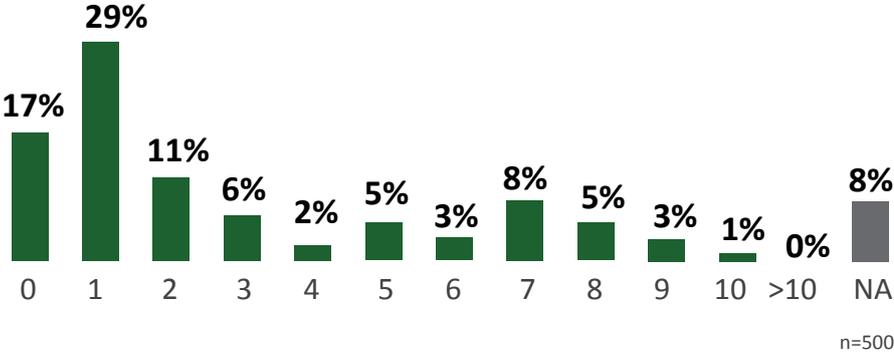
16 Larry Schlesinger, “Desperate home buyers risk ending up with lemons”, *Australian Financial Review*, 2 November 2021, <https://www.afr.com/property/residential/desperate-home-buyers-risk-ending-up-with-lemons-20211021-p59239>

17 Sean Nicholls, Sharon O’Neill and Naomi Selvaratnam, “A legacy of defects” ABC, 18 Aug 2019, <https://www.abc.net.au/news/2019-08-18/how-bad-could-the-apartment-building-crisis-be-in-your-state/11413122>; Henrietta Cook, “The \$1.3 million luxury apartment that’s covered in mould”, *The Age*, 5 September 2021, <https://www.theage.com.au/national/victoria/the-1-3-million-luxury-apartment-that-s-covered-in-mould-20210902-p58o5c.html>

18 Schlesinger, “Desperate home buyers risk ending up with lemons”, AFR.

FIGURE 7

### Number of building inspections obtained



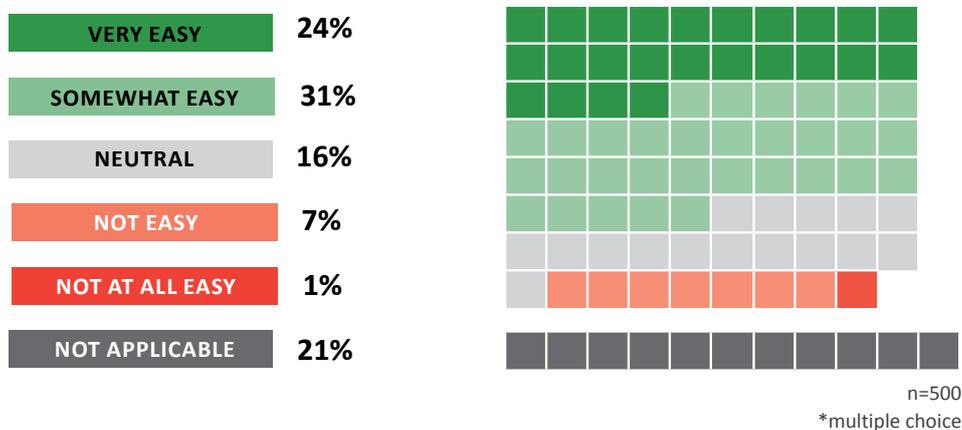
For those engaging in a deeper search process, their search may require obtaining multiple building reports which can quickly become expensive. The onus of obtaining a building inspection lies with the buyer which can create significant additional direct out-of-pocket costs. Building inspections are often paired with pest inspections and can cost between \$500-600 for both reports or \$250-300 for each individual report.<sup>19</sup> For the 17% of our sample reporting they obtained at least 7 building inspections (at \$300 per inspection), we estimate they faced costs of \$2,100 for the building inspections alone, \$4,200 if pest inspections were included (at \$600 per combined report). This is a significant extra cost for a buyer in the search process, especially for those searching for lower cost properties, and may explain why some respondents did not obtain a building inspection report at all. More problematically, where properties have been underquoted, buyers purchasing reports for unaffordable properties creates direct consumer harm (see section on underquoting – page 21).

Accessing a building report can also create logistical difficulties for buyers. Our research found almost a quarter (24%) of respondents indicate some degree of difficulty obtaining a building/pest inspection (1% “not at all easy”, 7% “not easy”, 16% “neutral” - see figure 8), reflecting the difficulty in scheduling inspections around both the availability of a real estate agent and a building inspector.

<sup>19</sup> Siobhan Hegarty, “The hidden services that could cost you when you’re buying a home”, *ABC Everyday*, 27 Sep 2019, <https://www.abc.net.au/everyday/hidden-costs-of-buying-a-home/11507502>

FIGURE 8

## Ease of accessing building/pest report



The requirement for each potential buyer to arrange building inspections also has an impact on any tenants residing in the property. Having a pest or building inspection in the home you live in can be a disruptive process. Having it done multiple times as multiple potential buyers commission reports, is excessively disruptive and can be perceived as highly invasive. Tenants and potential buyers would be better off if one report was provided, ideally by the vendor.

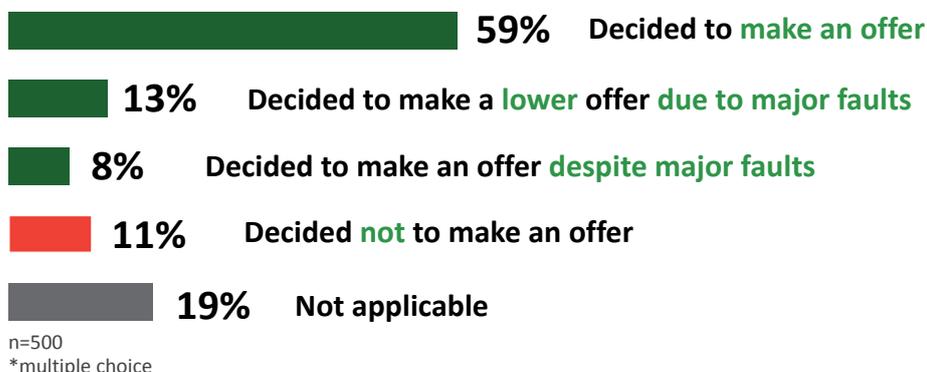
Allowing a vendor to choose the inspector for a building and pest inspection does create a risk of bias. A vendor could choose an inspector they hope will provide a more glowing report than the property deserves. The way to manage this risk is through clear requirements on inspectors through a licensing regime, already managed through Victorian Building Authority. Other jurisdictions manage this risk in a similar way. For example, the Civil Law (*Sale of Residential Property*) Act 2003 (ACT) requires that a vendor supplies a building and compliance inspection report and a pest inspection report, carried out within three months before the property is listed for sale.<sup>20</sup> The ACT system shifts the costs of reports from the buyers to a single vendor, creating efficiencies and reducing the overall cost of the process.

Reports about building condition, pest reports and other key disclosure mechanisms that directly affect consumer decisions are highly valuable – they help people inform decisions about the property they are considering. Our research found one in ten respondents (11%) decided not to make an offer on the property as a result of a key disclosure document they obtained, 13% decided to make a lower offer due to the presence of major faults and a further 8% made an offer despite major faults identified (see figure 9). This demonstrates how disclosure documents impact consumer decision making in the purchasing process – the discovery of defects or major faults may determine whether a consumer can even afford to buy the property given potential repair costs.

<sup>20</sup> Civil Law (*Sale of Residential Property*) Act 2003 ACT, s. 9(1)(h) - iii, iv.

FIGURE 9

## Consequence of disclosure documents on consumer choices

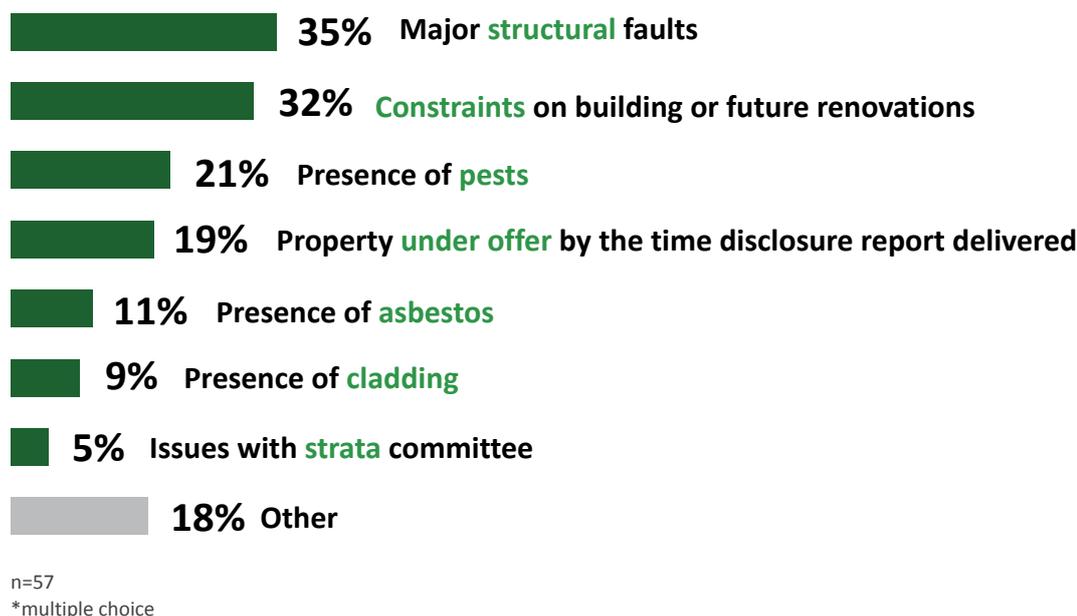


Those who did not make an offer as a result of a disclosure document indicated there were a range of reasons were identified in the report. Key reasons relating to the quality of build included, major structural faults (35%), presence of pests (21%), presence of asbestos (11%), and presence of flammable cladding (9%) (see figure 10).

Notably 19% reported they decided not to make an offer because the property was already under offer by the time key disclosure report documents were delivered (19%) – highlighting the issue with the onus on buyers to procure various these documents, and the additional difficulty this can create for buyers.

FIGURE 10

## Reasons for not making an offer after disclosure results



Obtaining key disclosure documents creates both additional costs and logistical difficulties for buyers seeking what is essential information about key properties within their choice set. Almost three quarters of respondents (73%) thought a requirement on the vendor to provide independent building/pest report was (“somewhat” or “very”) important to make the process of buying a property easier (see Q21 at appendix A).

## Recommendation

4. Vendors should be responsible for providing an independent building and pest inspection when a property is put on the market.



# A considerable consumer harm: Underquoting

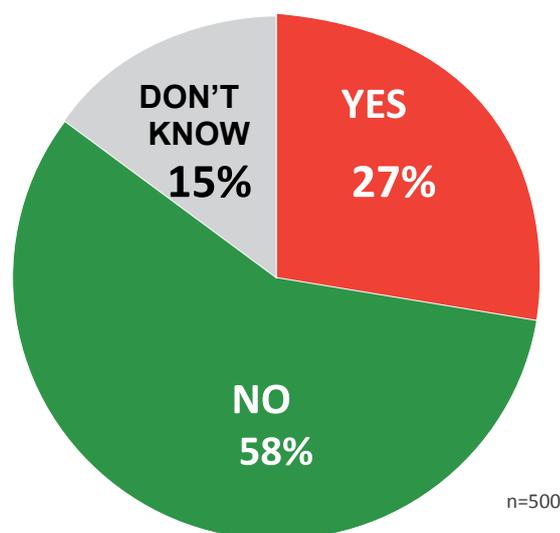
Underquoting causes direct harm to consumers and reflects market inefficiencies. It occurs when a property is advertised at a price that is less than the estimated selling price, is less than the seller's reserve, or at a price that has already been rejected by the seller.

For buyers seriously considering a property that has been underquoted, the practice can cost them time that could be spent considering or even bidding on other properties within their budget. Underquoting can create significant out-of-pocket costs for some buyers where they pay for multiple property reports and advice for unaffordable properties (as outlined above). It can also give rise to distrust in the process of purchasing a house and the key market actors or intermediaries involved. Trust has been widely identified as a key component of well-functioning markets - 'individuals and organisations will find it difficult (if not impossible) to operate effectively if they do not enjoy the trust and confidence of the community in which they are located'.<sup>21</sup>

Our survey asked people about their experiences with underquoting. We found more than a quarter of respondents (27%) believe they experienced underquoting, while a further 15% reported they were unsure whether they'd experienced it (figure 11).

FIGURE 11

Did you experience **underquoting** for any properties in which you put in an offer/actively bid?



<sup>21</sup> The Ethics Centre, Trust, *Legitimacy and the Ethical Foundations of the Market Economy*, (2018), 4.



**The property was advertised up to \$50k under what the vendor actually wanted so we refused to increase our offer to that amount and missed out on the property.**

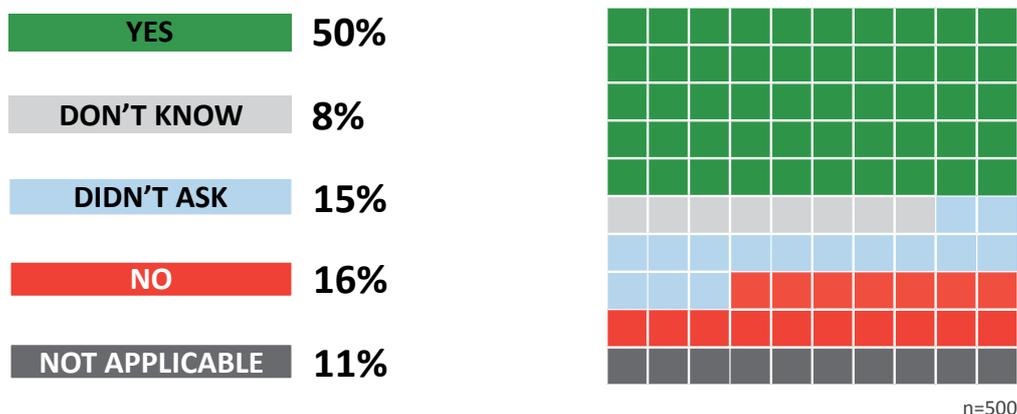
**Respondent aged 50-64, principal residence (not first home buyer), Metro Melbourne**

Consumers purchasing through an auction-based sales channel were more likely to report underquoting (39% vs 28% buying via private sale). Once underway, auctions can provide clear insight around the vendors reserve which often is not published elsewhere. Our research also found a slightly higher proportion of those obtaining independent value appraisals of properties reported underquoting (31% vs 27% of those who did not). This suggests that better informed buyers - armed with more reliable information around pricing beyond the Statement of Information – have a better understanding of a realistic selling price.

There is currently no requirement for a seller to disclose their reserve price to their agent before auction day – which can result in a vendor’s reserve being set above the advertised indicative selling price or range. Over a third of respondents reported the property they bought was sold at a price above the top of indicative selling range/price (see figure 6 above). While the sale result does not necessarily indicate underquoting, our survey also found 16% of respondents reported the vendors reserve was not within the advertised price range (figure 12). From a buyers’ perspective, a reserve price above the indicative selling range or price is a strong indication of underquoting. A further 8% of respondents reported they “didn’t know” whether the vendors reserve was within the advertised price range, because they either weren’t sure or weren’t made aware by the agent, while a further 15% of respondents didn’t know because they didn’t ask.

FIGURE 12

### Did the property you purchased go “on the market” (i.e. met the vendor’s reserve) **within the advertised price range?**





**The vendors reserve on the day was WAY over the quoted range! Was very disheartening for 1st home buyers trying to buy a bit of a fixer upper.**

**Respondent aged 25-34, principal residence first home buyer, Metro Melbourne**

While vendors need be able to adjust their reserve price based on market conditions – updating this key piece of information needs to be transparent and accessible for buyers, the indicative price range should be updated clearly and well ahead of auction.

A simple solution to the issue of vendors setting a reserve well outside the indicative price range is to require the publication of this information when a property is put on the market. Any changes to the vendors reserve or indicative price range should be made well in advance of auction. The overwhelming majority of consumers agree - three quarters (75%) of respondents considered it was “somewhat” or “very” important to publish a vendors reserve price well in advance of auction to make buying a property easier (see Q21 at appendix A).

## **Agents and their role in underquoting**

Our research found strong evidence of agents’ actions prompting buyers to increase bids or offers. 59% of respondents reported an experience of an agent encouraging them to make a higher offer in a range of circumstances (see figure 13).

More than one in five respondents reported an agent had encouraged them to provide a higher offer than their verbal offer (23%), their stated budget (21%) or a written offer (20%). One in seven respondents (14%) reported real estate agents encouraged them to provide an offer higher than the top of the advertised price band.

In some circumstances, inducing higher offers can constitute false representation or underquoting. More than three quarters of respondents (78%) considered it somewhat or very important to improve the transparency of the bidding process (see Q21 at appendix A). To achieve this, at a minimum agents need to keep an auditable paper trail of all offers to aid the regulator in overseeing the bidding process and identifying underquoting.



**The price we offered was well within the price range. Vendor would not consider any offer that was not higher than the top of the range.**

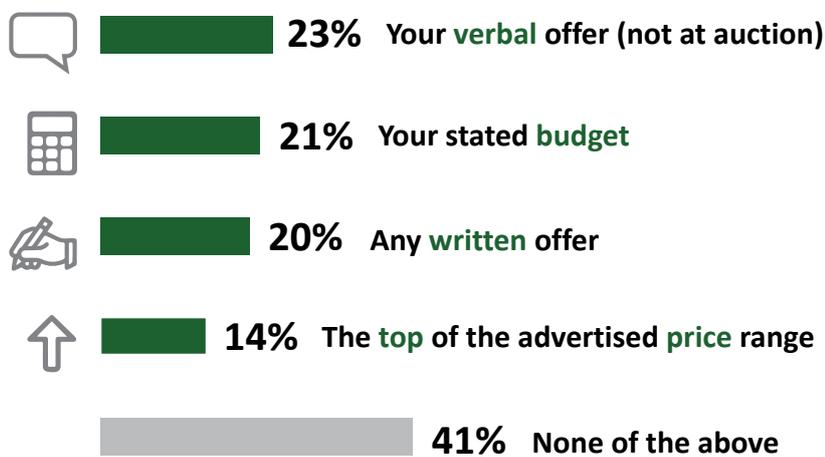
**Respondent aged 50-64, investor (not first property), Regional Victoria**

“ “ The properties went for so much over the advertised price. Real Estate guy said everything is going for at least 10% over and to expect that so if they know that why don't they quote higher.

Respondent aged 18-24, principal-residence (not first home), Regional Victoria

FIGURE 13

### Has an agent ever encouraged you to provide a higher offer than any of the following?



n=500 \*multiple choice

“ “ Real Estate Agent openly advised [*sic*] saying they would only accept offers \$50,000 over advertised range online.

Respondent aged 25-34, principal residence first home buyer, Metro Melbourne

Real estate agents and their representatives currently aren't required to meet the standards expected of other professionals assisting consumers with other major financial purchases. As the key intermediary for consumers buying one of the most significant lifetime purchases, meaningful continuing professional development should be a mandatory requirement. More than three quarters of respondents (79%) considered it was "somewhat" or "very" important to introduce requirements for real estate agents to meet higher professional standards.

## Recommendations

- Vendors should publish their reserve price when the property is first put on the market, with any changes to the reserve made and published well in advance of auction.
- Agents should keep records of all written offers made for a property. Records should be made available on request to Consumer Affairs Victoria to allow for easier ongoing monitoring and enforcement action against underquoting.
- Real estate agents and their representatives be required to undertake annual continual professional development to meet higher professional standards. Training should be focused on how professionals can better understand relevant laws, support diverse groups of people and provide quality service to all Victorians.



# Navigating the contract and Section 32

Understanding the contract and the Section 32 document is another key aspect of buying a property. The Section 32 document (or “vendors statement”) includes all the information that may affect the sale of the property, especially where such information may affect the decision of the buyer, including covenants, easements or restrictions over the land or any building permits issued.

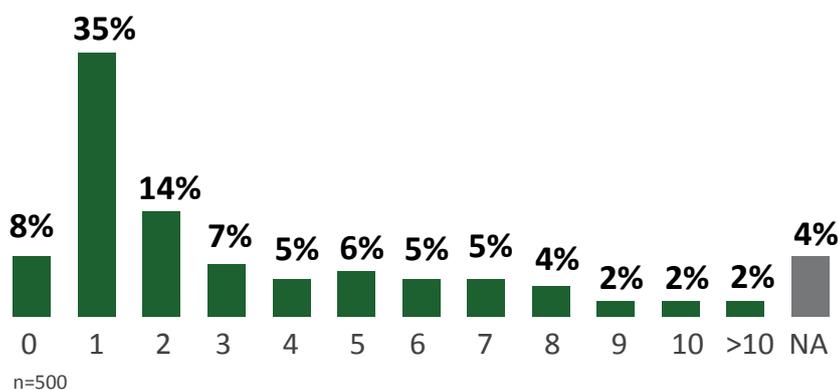
Conveyancing reviews of the contract and Section 32 document can cost \$250 per review, though some conveyancers will include a limited number of Section 32 reviews with a commitment to engage them for conveyancing of the purchased property.<sup>22</sup>

Our survey found 8% of respondents didn’t seek a conveyancer’s review of their Section 32 prior to purchase at all (see figure 14). These respondents may have found cost was a barrier, or they may have considered themselves experienced or knowledgeable enough to navigate these documents unassisted by a conveyancer. More commonly, respondents indicated they obtained a conveyancers review of just one property (38%). For the 15% of respondents who obtained between 7 and 10 conveyancer reviews (at \$250 per review), we estimate a total of \$1,750 in contract review costs pre-purchase for this group of respondents. This reflects significant costs in addition to conveyancing costs during settlement.

While it’s appropriate for a buyer to pay for the cost of reviewing a contract and the Section 32 document, costs could be reduced through contract simplifications or standardisations. It should be much easier for a buyer to compare contracts and Section 32 documents for similar properties side-by-side to identify key differences.

FIGURE 14

## Number of conveyancer reviews of contract/Section 32



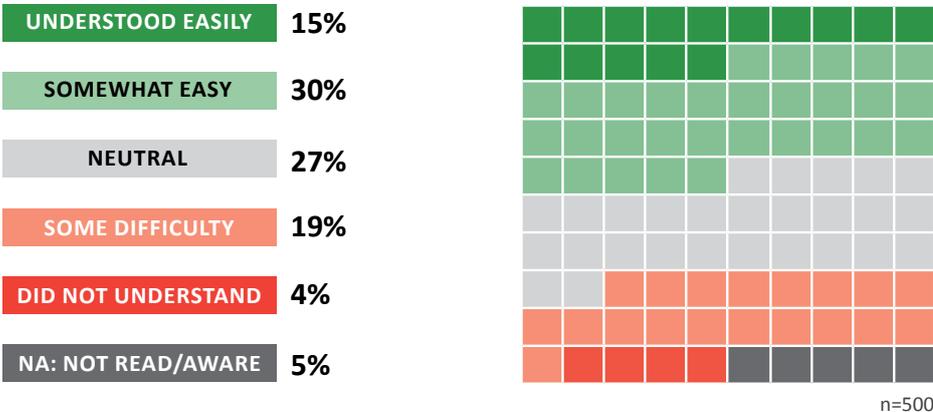
<sup>22</sup> Elizabeth Redman, “Chasing rainbows’: Underquoting complaints surge as buyers waste time and money’, *The Age*, 8 February 2022 <https://www.theage.com.au/property/news/chasing-rainbows-underquoting-complaints-surge-as-buyers-waste-time-and-money-20220217-p59xd4.html>

The quality and readability of Section 32 documents can be highly variable. This document can be a photocopy of a photocopy, with small, poorly reproduced text and diagrams. Comprehensibility is further hampered by the legalese included in Section 32 documents.

Our survey found less than half of respondents (45%) found it “somewhat” or “very” easy to understand the Section 32 prior to putting in an offer (figure 15). Concerningly, 5% reported they weren’t aware of the Section 32 or didn’t read it, while a further 4% reported they did not understand the Section 32 at all prior to purchase.

FIGURE 15

**Ease of understanding contract/Section 32 prior to putting in offer?**



However, of those who indicated at least some understanding of the Section 32<sup>23</sup> (figure 15), only a third (34%) reported they understood the Section 32 *without* the advice of their conveyancer (see Q16a, appendix A). This highlights the complexity of this disclosure document, notionally a protection afforded to buyers, and suggests there is scope for reforms to improve readability and comprehensibility.

A wide range of essential services have engaged in behavioural testing of key disclosure information to improve consumer comprehension and CPRC would encourage Consumer Affairs Victoria to consider similar approaches.<sup>24</sup> Notably, more than three quarters (75%) of respondents thought it was “somewhat” or “very” important to improve the readability of key information about the property – such as the Section 32 statement (see Q21 at appendix A).

**Recommendation**

- 8. Consumer Affairs Victoria should undertake consumer testing and use the insights to introduce mandatory requirements to improve the readability and comprehensibility of the Section 32 key disclosure documentation.**

<sup>23</sup> Answered question “To what extent did you understand the contract/Section 32 prior to putting in an offer?” with “some difficulty”, “neutral”, “somewhat easy” or “completely understood/was easy” to understand Section 32.  
<sup>24</sup> See Behavioural Economics Team of the Australian Government, *Improving energy bills: final Report – A report for the Australian Energy Regulator*, October 2021, <https://behaviouraleconomics.pmc.gov.au/projects/improving-energy-bills/>; Australian Securities and Investments Commission (ASIC) and the Dutch Authority for Financial Markets (AFM), *Disclosure: Why it shouldn't be the default* (REP 632), October 2018, <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-632-disclosure-why-it-shouldn-t-be-the-default/>

# Consumer protections are optional

During recent years in Victoria, strong competition in a rising sellers-market has enabled vendors and their agents to push buyers into waiving key consumer protections. This is most evident in the shift to sale via auction rather than private sale.<sup>25</sup> This removes key consumer protections afforded through other sales channels, such as a cooling off period or the ability to make offers 'subject to finance'.

Buying at auction shifts the risk from vendors to buyers, who are legally obligated to provide a deposit on the day of auction (typically 10% of purchase price), which cannot be recovered should the buyer fail to secure finance or find a reason not to proceed with the sale. Even outside the auction sale channel, vendors and their agents can set sale terms that require buyers to waive a subject to 'finance clause' or building/pest inspection clause, particularly in a competitive seller's market.

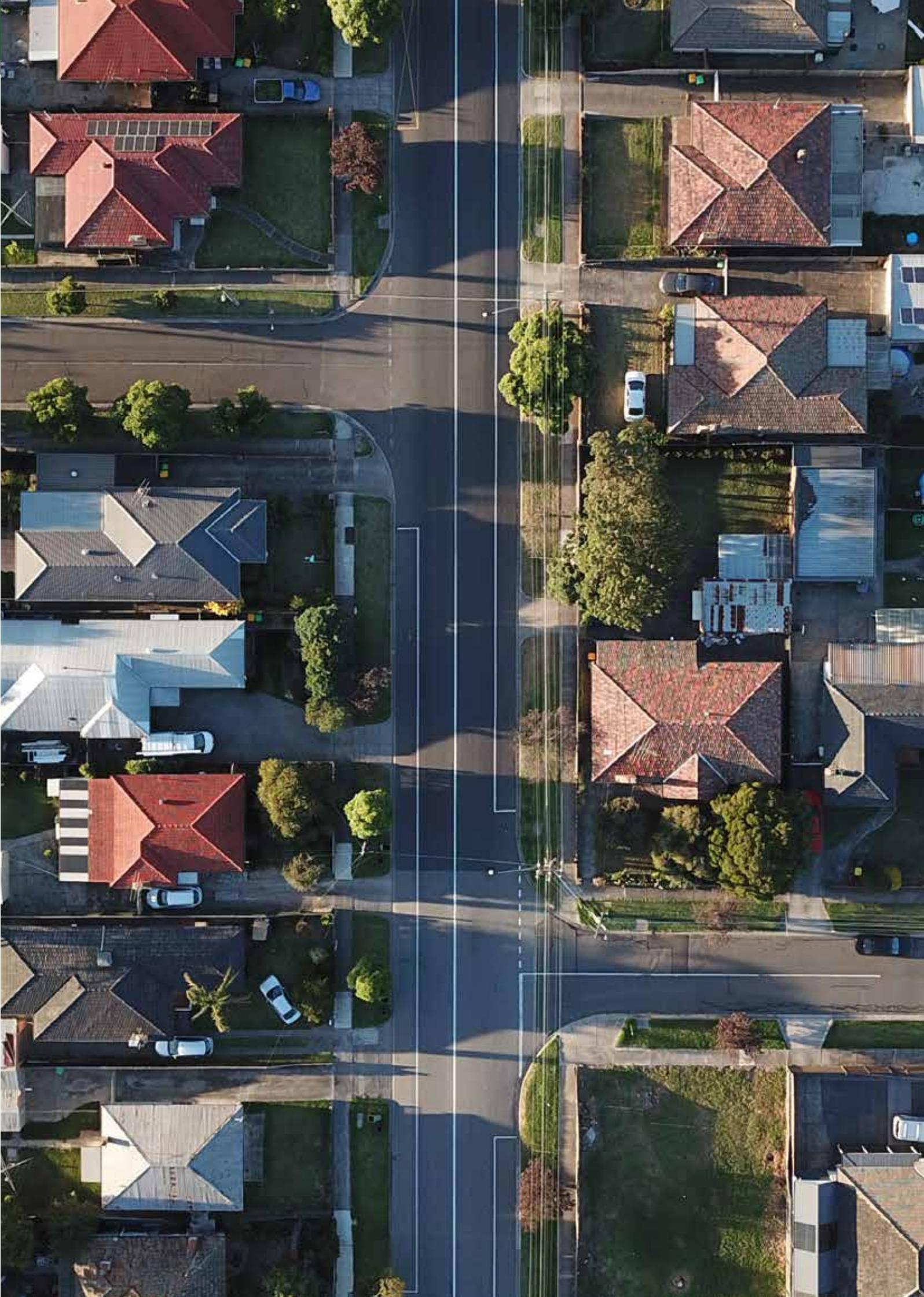
Consumers strongly favour retaining these protections, our research found slightly more than three quarters of respondents (76%) thought it was "somewhat" or "very" important to retain a 3-5 day cooling off period, regardless how the property is purchased (see Q21 at appendix A). And just under three quarters (74%) thought it was "somewhat" or "very" important that buyers are protected by a subject to 'finance clause' regardless of how the property is purchased (see Q21 at appendix A).

## Recommendations

- 9. Buyers should always have a right to a 3-5 day cooling off period regardless of how the property was purchased (including at auction).**
- 10. Buyers should be able to retain a subject to finance clause regardless of how a property is purchased (including at auction).**

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<sup>25</sup> Michael Janda, "Auction records smashed in pre-Christmas real estate frenzy", ABC, 20 Dec 2021 <https://www.abc.net.au/news/2021-12-20/auction-records-smashed-in-pre-christmas-real-estate-frenzy/100714040>



# Appendix A – CPRC survey results

## Q1. Location

Regional Victoria	33%
Metro Melbourne	67%

## Q2. Age

18-24	10%
25-34	33%
35-49	33%
50-64	14%
65 years or older	9%
Prefer not to answer	0%

## Q3. Thinking about your property purchase in the last 5 years, were you buying a

Principal place of residence – first home buyer	47%
Principal place of residence – not first home buyer	37%
Investor – first property purchase	9%
Investor – not first property	7%

## Q4. What kind of property did you buy?

New build – apartment	7%
New build – townhouse	9%
New build – house	24%
Established build – apartment	9%
Established build – townhouse	9%
Established build – house	38%
Other	4%

## Q5. Thinking about how you purchased your property, did you buy:

Off the plan (you purchased before the property was built)	21%
Bought off-market (never advertised publicly)	8%
Private sale (no auction campaign)	36%
Bought before auction in private sale	10%
“Blind” auction, “Dutch” auction, or “First-price-sealed-bid” (unlike auction, potential buyers do not have transparency about other bids or number of bidders)	3%
Boardroom auction (where a group of buyers is invited by the seller, or agent, to bid for a property ahead of auction)	2%
Auction (in-person)	11%
Auction (virtual)	1%
Post auction – negotiated once passed-in	2%
Other [please state]:	5%

**Q6. As part of your search process, how many properties did you click through to see the full listing online (via real-estate website listings, for example: Realestate.com.au, Domain, etc)?**

1-5	11%
6-10	14%
11-15	14%
16-20	16%
21-30	11%
31-50	10%
51-75	6%
76-100	4%
101+	10%
I did not search online at all	5%

**Q7. In narrowing down your choices, how many properties did you inspect in-person as part of your search process?**

1-5	35%
6-10	29%
11-15	12%
16-20	10%
21-30	4%
31-50	4%
51-75	1%
76-100	1%
101+	0%
Did not inspect in-person due to COVID restrictions	5%

**Q8. How many properties did you make an offer or seriously consider making an offer for (e.g. registered or participated at an auction)? (best estimate)**

1	32%
2	30%
3	21%
4	6%
5	4%
6	2%
7	1%
8	1%
10	1%
11	0%
12	1%
15	0%
20	0%
30	0%

**Q9. Did the property you bought sell:**

Below the advertised price range	15%
Within the advertised price range	53%
Slightly above the advertised price range (less than 10% above the price range)	24%
Above the advertised price range (10% - 20% above the price range)	5%
Significantly above the advertised price range (more than 20% above the price range)	2%

**Q10. Did the property you purchased go “on the market” (i.e. met the vendor’s reserve) within the advertised price range?**

Yes	50%
No	16%
Don’t know – didn’t ask	15%
Don’t know – wasn’t clear/made aware by agent	8%
Not applicable	11%

**Q11. Did you experience underquoting for any properties in which you put in an offer/actively bid?**

Yes	27%
No	58%
Don’t know	15%

**Q12. On a scale of 1-5, how accurate do you think the Statement of Information is at offering a comparison of “similar properties” and their prices?**

Not at all accurate	7%
Somewhat inaccurate	15%
Neither accurate nor inaccurate	25%
Somewhat accurate	45%
Very accurate	7%

**Q13. For how many properties did you obtain the following kinds of Key Disclosure Information?**

Number of disclosure documents	Building inspection	Pest inspection	Conveyancer reviewed contract/ Section 32	Balcony inspection	Independent value appraisal of a property	Strata report	A Survey Report	Other
0	17%	25%	8%	40%	38%	29%	38%	40%
1	29%	25%	35%	9%	18%	18%	17%	12%
2	11%	11%	14%	5%	8%	10%	6%	6%
3	6%	5%	7%	3%	4%	4%	3%	3%

4	2%	3%	5%	2%	3%	3%	2%	3%
5	5%	4%	6%	4%	3%	6%	3%	3%
6	3%	2%	5%	4%	3%	3%	4%	4%
7	8%	4%	5%	3%	4%	3%	3%	3%
8	5%	5%	4%	3%	4%	2%	5%	5%
9	3%	5%	2%	3%	3%	4%	3%	1%
10	1%	1%	2%	2%	1%	1%	1%	1%
10+	0%	1%	2%	1%	0%	1%	1%	1%
NA	8%	8%	4%	22%	10%	16%	14%	17%

**Q14. Thinking about all the properties you made an offer/bid on at auction, and various key disclosure reports you purchased (e.g. building/pest reports, conveyancing review) please include all outcomes during your purchase journey**

Decided to make an offer	59%
Decided to make an offer – despite major faults	8%
Decided to make a lower offer – due to major faults	13%
Decided not to make an offer	11%
Not applicable/no impact	19%

**Q14a. (IF “Decided not to make an offer” = YES) Of those properties where you decided not to make an offer, please select all reasons that apply?**

Constraints on building or future renovations, e.g. easements, presence of a party wall, heritage overlay	32%
Major structural faults	35%
Presence of pests	21%
Presence of asbestos	11%
Presence of cladding	9%
Issues with strata committee	5%
Property under offer by the time key disclosure report delivered	19%
Other [please state]:	18%

**Q15. How easy was it to access or obtain a building/pest report?**

Not at all easy	1%
Not easy	7%
Neutral	16%
Somewhat easy	31%
Very easy	24%
Not applicable	21%

**Q15a (If Q15= SOMEWHAT EASY”, OR “VERY EASY”, OR “NOT APPLICABLE” = Skip to Q16)****Did you have any difficulty accessing or obtaining building/pest reports?**

Yes	89%
No	11%

**Q16. To what extent did you understand the contract/Section 32\* prior to putting in an offer?**

NA - didn't read/not aware of Section 32	5%
1 - Did not understand Section 32 at all	4%
2 - Some difficulty understanding Section 32	19%
3 - Neutral	27%
4 - Somewhat easy to understand Section 32	30%
5 - Completely understood/was easy to understand Section 32	15%

**Q16a (IF Q16 = “NA”, or “Did not understand S32 at all”, SKIP to Q17)****Which of the following statements best describes your understanding of the contract/Section 32\*, if you had to choose one?**

I understood Section 32 with advice from the conveyancer	66%
I understood Section 32 without advice from the conveyancer	34%

**Q17. Has an agent ever encouraged you to provide a higher offer than any of the following?**

Your verbal offer (not at auction)	23%
Your stated budget	21%
Any written offer	20%
The top of the advertised price range	14%
None of the above	41%

**Q18. How responsive were real estate agents in arranging building inspections?**

Not at all responsive	2%
Somewhat unresponsive	7%
Neutral	35%
Somewhat responsive	36%
Very responsive	19%

**Q19. How would you rate the process of buying a house in Victoria?**

Very negative	5%
Somewhat negative	20%
Neutral	28%
Somewhat positive	38%
Very positive	10%

**Q20. Please provide three words to describe the process of buying a house in Victoria: [Open text]**

**Q21. How important are the following to make the process of buying a property easier?**

	Not at all important	Somewhat unimportant	Neutral	Somewhat important	Very important
Publication of reserve price well in advance of auction	2%	4%	19%	35%	40%
Improve accuracy of advertised price range and comparable properties (i.e. the Statement of Information)	1%	3%	14%	33%	49%
Requirement for vendor to publish independent valuation (as required by banks when providing finance)	4%	4%	19%	40%	32%
Free access to historic pricing information - reserve prices and purchase prices for ongoing transparency in the market	2%	4%	16%	36%	42%
Improve readability of key information about the property (e.g. the Section 32 statement)	1%	4%	17%	38%	40%
Requirement for vendor to provide independent building/pest report	2%	5%	20%	33%	40%
Requirements for higher quality of build	2%	4%	18%	31%	45%
Require real estate agents to meet higher professional standards	1%	4%	16%	35%	44%
Improve transparency of bidding process	1%	4%	18%	35%	43%
3-5 day cooling off period regardless of how the property is purchased	2%	4%	17%	31%	45%

