

Estate Agents Council

Annual Report

2019-20

# Foreword

The Estate Agents Council (the Council) is a statutory body established following the 1994 amendments to the *Estate Agents Act* 1980 (Vic) (the Act).

The Minister for Consumer Affairs has responsibility for the Act and accordingly, the Council’s functions and powers are subject to the direction and control of the Minister for Consumer Affairs. The Council reports to and advises the Minister for Consumer Affairs on:

* the operation of the Act and its regulations;
* the efficiency and effectiveness of industry regulation under the Act;
* services provided by estate agents; and
* industry developments.

# The Council also undertakes research projects and makes recommendations to the Minister for Consumer Affairs on applications for grants from the Victorian Property Fund (VPF).

# The impact of COVID-19

The Council wishes to briefly acknowledge the effects of COVID-19 in terms of the real estate industry and on agents.

For many people, the impacts of COVID-19 have been the most significant in living memory in terms of the ability to buy or sell property and, in the case of agents, being able to conduct the necessary tasks of an estate agency business profitably.

The Council elected to focus on these matters almost exclusively from January to June of 2020 for the reasons documented above but also elsewhere in this document.

This environment led to an adjustment with the way the Council operated. Whilst the Council met face to face in 2019, all meetings in 2020 were conducted either by Zoom or by teleconference. The Council behaved in a manner consistent with applicable restrictions in force within Victoria regarding work gatherings.

# Change of Minister

The Council also wishes to recognise the change in Minister during 2019-2020. The Council wishes to thank Minister Kairouz (as she was then known).

The Council wishes to welcome Minister Horne and wishes the Minister the very best for the role in such a challenging time.

# Mission, vision and functions

### The Council’s vision is as follows:

### A fair real estate market place in which the public has confidence, the interests of vendors, buyers, tenants and property owners are balanced and all segments of the industry are well serviced.

The primary work of the Council as detailed in section 6B of the Act is to:

* monitor the operation of the Act and the regulations;
* assess the efficiency and effectiveness of regulation of the real estate industry under this Act and the need for further regulation or alternatives to regulation, such as deregulation or co-regulation;
* monitor developments in the real estate industry generally; and
* advise the Minister for Consumer Affairs on any of the aforementioned matters, respond to issues referred to the Council by the Minister and make recommendations relating to the applications of grants under section 76 of the VPF.

# Membership

For the financial year 2019 – 2020 there were seven members of the Council.

The final member position has been advertised and interviews were conducted but a suitable candidate was not identified. The matter has been brought to the attention of CAV so advertisements may again be placed.

Section 6 of the Act sets out membership details for the Council:

* Three members of the real estate industry who for the previous five years have been practicing licensed estate agents, two of whom are nominees of the Real Estate Institute of Victoria (REIV);
* One member who has been a licensed estate agent for the previous five years and is the nominee of the Australian Livestock and Property Association (ALPA);
* One member who is an Australian Lawyer of not less than five years standing;
* One member who is an Accountant who is a member of CPA Australia or The Institute of Chartered Accountants in Australia; and
* Two members are to be persons who are not estate agents and are not employed in the estate agency industry or in the provision of services to estate agents.

The Governor in Council appoints the Chair and Deputy Chair from the membership of the Council on the recommendation of the Minister for Consumer Affairs. Council members are appointed for up to three-year terms (with the possibility of subsequent reappointment) and are remunerated. The Chair for 2019-20 was Mark Skermer and the Deputy Chair for 2019-20 was Mark Brooke.

Members were as follows as of 30 June 2020:

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** | **Role** | **Appointment** | **Expiry date** |
|  |  |  |  |
| Mark Skermer | Chair | Barrister and Solicitor – section 6(2)(c) | 25/07/2023 |
| Mark Brooke | Member | Licensed Estate Agent - Australian Livestock and Property Association (ALPA) Nominee section 6(2)(b) | 10/02/2023 |
| Patricia Roake | Member | Person not engaged in the real estate industry/ Consumer Representative  section 6(2)(e) | 31/3/2021 |
| Louise Kloot | Member | Member of CPA Australia section 6(2)(d) | 30/6/2021 |
| Janet Spencer | Member | Licensed Estate Agent – REIV Nominee section 6(2)(a) | 10/02/2023 |
| Rosslyn Curnow Nolch | Member | Person not engaged in the real estate industry/ Consumer Representative  section 6(2)(e) | 30/06/2021 |
| Kevin Sheehan | Member | Licensed Estate Agent – REIV Nominee section 6 (2)(a) | 30/06/2021 |

# Consumer Affairs Victoria (CAV)

The Council continued to work with and provide assistance to the Minister and Consumer Affairs Victoria in relation to:

1. The effects of COVID-19 and the state of emergency and state of disaster declared within Victoria on the real estate industry as well as on estate agents. This was so particularly in relation to the roles and functions of estate agents;
2. The operation and effect of rent relief provisions and the messaging applied by the Victorian Government in terms of tenants and their obligations regarding payment of rent;
3. The operation and effect of rental law changes and reviews including but not limited to amendments to the landscape of residential leasing within Victoria;
4. The operation of the Real Estate Reference Panel and attendances at the meetings convened by this panel by either Mark Skermer or Mark Brooke;
5. Underquoting, statements of information and the effects of the recent legislation;
6. Proposed amendments to sale of land and tenancy laws;
7. The provision of relevant statutory declarations, an Organisation Profile Assessment and a Protective Data Security Plan to OVIC as they relate to the security of Government and department data;
8. The operation of Purple Bricks Franchising within the Victorian property landscape and it’s cessation of services within the industry;
9. The operation of current land tax laws and the obligations imposed by those laws on agents. During the course of 2020, there was also a focus on land tax relief (both mandated by the Parliament and otherwise);
10. The complaints received by CAV in relation to agents and the request for information regarding quantum and classifications as to merit;
11. The operation of the Council and its interaction with CAV; and
12. Matters otherwise of interest to estate agents and consumers within the State of Victoria.

The Council routinely wrote to the Minister during 2019-20 in relation to the above matters.

The practice of conducting meetings during business hours was in effect for the entire year and worked well. It shall become common practice moving forwards.

# Guests at Council meetings

Senior officers of CAV regularly attended meetings of the Council during 2019-20. Topics discussed at these meetings included matters of importance to the Council, including but not limited to a briefing from the Director of CAV, VPF Briefings, legislative and policy briefings, the review of the Act and the investigations of fraud in the industry.

# Data received by the Council

The Council receives regular reports from the CAV in regards to matters such as dispute resolution, case reports by the Estate Agents Resolution Services, grant applications and updates and licensing trends.

The Council has adopted an approach during the past 12 months of seeking more specific information from CAV relevant to the estate agents industry. That process is ongoing.

# Resources

The Act provides that the remuneration of members and expenses incurred by the Council while fulfilling its duties be paid from the Victorian Property Fund. Such payments are at the direction of the Secretary of the Department of Justice.

Under the Act, one of the functions of the Director of Consumer Affairs Victoria is to provide assistance and support to the Council.

The support and assistance provided to the Council in the period under review included:

* the provision of a Council Secretary from the CAV Corporate Support Branch;
* the use of meeting room facilities;
* Secretariat Resources – printing, stationery, internet, phone and facsimile facilities;
* providing the Council with briefings on various issues, such as VPF grant application evaluations and monthly reports;
* the provision of advice and administrative support regarding Freedom of Information requests related to the Council;
* the printing and distribution of the Council Bulletin; and
* infrastructure for the EAC website.

# Council secretary

Secretarial assistance to the Council was provided by Maria Maikousis, Senior Executive Services Co-Ordinator, Information and Corporate Services - Consumer Affairs.

# Secretarial Estate Agents Council Bulletin

Copies of bulletins issued by the Council are available at the Council's website. See details below.

# Victorian Property Fund: grants made pursuant to section 76 of the Estate Agents Act 1980

The VPF is established by section 72 of the Act and consists of among other monies interest received from Estate Agents Trust Accounts.

The Act authorises the Minister for Consumer Affairs to expend excess monies from the VPF for the various purposes detailed in section 76(3) of the Act.

Under section 76 of the Act, the Minister for Consumer Affairsis required to consult the Council before applying monies from the fund.

During the period covered by this report the Council considered the following applications worthy of grants from the VPF in relation to the usual VPF Housing Funding round: Nil.

The state of emergency and state of disaster declared in Victoria by the Victorian Government in relation to COVID-19 has meant that the Department did not advance funding rounds for VPF either in relation to social housing or environmentally sustainable housing.

This is a matter which was raised with the Minister’s office and the Council was advised that due to the state of emergency and the state of disaster, the funding rounds would not be advanced.

The Council is hopeful that the normal VPF funding processes resume in 2020-2021.

The Council remains concerned that applications for significant VPF funding are including the value of land as effectively a capital contribution to the projects proposed by any given applicant. In most instances where this occurs however, there is no recorded intention on the part of the applicant to transfer the land to the State or otherwise have certificates of title secured. The Council expects this trend to decrease in frequency moving forwards.

VPF distributions were made during the course of the financial year to projects which had already been approved by the Council and the Minister in accordance with the terms of those projects. The Council was not directly involved in the making of those disbursements but thanks the Department for it’s continued administration of same.

# Monitoring function

The Council continued to monitor numerous issues including trust account practices, compliance and enforcement, and concerns around property management, and kept abreast of developments on the national agenda. In addition, the Council has provided feedback during the consultation around various new and remade pieces of legislation.

**Most important issues in 2019 – 2020**

The most important issues during this time were the effects of COVID-19 on the real estate industry. In particular, the effects on the property market for both vendors and buyers as well as the ability of estate agents to be able to operate profitable businesses during this time. The Government restrictions which applied in Victoria during the majority of January to June 2020 had a very significant impact in terms of real estate transactions but also on agents in terms of their ability to conduct normal trading operations such as conducting inspections, participating in the sales process, participating in the auctions process and general file and related matters which agents must discharge either by contract or law.

The Council is very much aware that these impacts have flowed over into the second half of 2020.

# Conclusion

The Council considers that it’s 2020 - 2021 agenda will include the following:

* Review of the Estate Agents Act generally and consideration of relevant issues;
* Continuing to advise the Minister in relation to the impacts of COVID-19;
* Rooming house matters and the professionalism of industry;
* The effect and timing of residential tenancy matters;
* Emerging issues and trends;
* Red tape reduction for the real estate industry; and
* Industry compliance with statutory and regulatory changes balanced against proper advice from regulators.

The Council looks forward to continuing to advise the Minister for Consumer Affairs on developing issues, responding to references and providing recommendations on VPF grant applications.

The Council welcomes the opportunity to work with the Minister for Consumer Affairs, CAV and industry and consumer stakeholders to achieve our common goal of a robust and equitable Victorian real estate sector, which is vital in the challenging times ahead.

# Council contact details

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