

Estate Agents Council

Annual Report

2018-19

# 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).

# 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 2018 – 2019 there were seven members of the Council.

The final member position is currently being advertised and interviews are being conducted.

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 agents 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 2018-19 was Mark Skermer and the Deputy Chair for 2018-19 was Mark Brooke.

Members were as follows as of 30 June 2019:

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| --- | --- | --- | --- |
| **Name** | **Role** | **Appointment** | **Expiry date** |
|  |  |  |  |
| Mark Skermer | Chair | Barrister and Solicitor – section 6(2)(c) | 25/04/2020 |
| Mark Brooke | Member | Licensed Estate Agent - Australian Livestock and Property Association (ALPA) Nominee section 6(2)(b) | 12/09/2019 |
| 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) | 13/12/2019 |
| Rosslyn 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 outcomes and effect of the *matter of Advisory Services Pty. Ltd.* and the accompanying *Justice Legislation Miscellaneous Amendment Bill 2018 (Vic)* regarding the question of agent exposure to claims for commission arising from the aforesaid case;
2. Advice in relation to the *Estate Agents (General, Accounts and Audit) Amendment Regulations 2018* (Vic);
3. The operation of the Real Estate Reference Panel and attendances at the meetings convened by this panel by either Mark Skermer or Mark Brooke;
4. Underquoting, statements of information and the effects of the recent legislation;
5. The VPF Grant application processes in relation to skills and training for agents, housing and sustainable housing; and
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 bases upon which parties may seek funding from the VPF and an invitation to CAV to outline not only recent applications received but whether there were plans to actively seek applications from other areas provided for in the legislation;
9. The operation of section 189 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic) insofar as it unfairly affects agents seeking to recover commissions;
10. The operation of Purple Bricks Franchising within the Victorian property landscape and whether an investigation was required in relation to various consumer law breaches;
11. The complaints received by CAV in relation to agents and the request for information regarding quantum and classifications as to merit;
12. The operation of the Council and its interaction with CAV; and
13. Matters otherwise of interest to estate agents and consumers within the State of Victoria.

The Council routinely wrote to the Minister during 2018-2019 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 2018 - 19. 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, from the Corporate Support Branch of Consumer Affairs Victoria.

# 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:

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| --- | --- | --- |
| **Grant Recipient** | **Value approved (excl. GST)** | **Description of funded program** |
| Aboriginal Housing Victoria | $1,260,020.00 | Development in Eaglehawk of seven two bedroom, single-storey stand alone units to provide support to small Aboriginal families dealing with homelessness, domestic violence or dealing with the impacts of incarceration. |
| Rural Housing Network Limited | $948,738.00 | Development in Wodonga of four two-bedroom units to assist primarily with homelessness. |
| Common Equity Housing Limited | $4,292,573.00 | Development in Brunswick of a 17 unit multi-storey social housing development to provide affordable rental accommodation for persons on low incomes within the City Of Moreland. |
| Kids Under Cover | $2,368,231.00 | A program designed to provide studio installation housing in the form of 11 one bedroom and 13 two bedroom studios per year for three years for young people at risk of homelessness. The studios have a lifespan of 20 years and can be easily relocated according to need. |
| Wintringham Housing Limited | $6,586,460.00 | Development in Geelong to provide an additional 22 social housing units in a three-storey building for persons over 50, disadvantaged, homeless or at risk of homelessness. |
| Mallee Accommodation & Support Program Limited | $2,025,000.00 | Development in Mildura for 13 one bedroom units so as to increase supply of long-term affordable housing for low income persons, singles living in non-compliant rooming houses and for women/children escaping domestic violence. |
| Community Housing (Vic) Limited | $1,520,400.00 | Development in Sale to provide long term supported accommodation for persons over 65 years of age living with disability or progressive illness. |
| **Total** | **$19,001,422.00** |  |

# The Council was pleased to be able to recommend applications to the Minister that were designed to benefit both metropolitan and regional areas as well as for a range of purposes. The 2018-2019 application round featured applications from a series of regions across the State of Victoria, which represented a significant increase based on previous years.

The Council is becoming increasingly 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.

# No applications were considered in relation to any Environmentally Sustainable Housing Funding Round.

# 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 2018 – 2019**

The most important issues during this time were the matters of Advisory Services, VPF approvals and outstanding issues related to legislation over the past 18 months and the review of that legislation and it’s effectiveness.

# Conclusion

The Council considers that its 2019 - 2020 agenda will include the following:

* Review of the Estate Agents Act generally and consideration of relevant issues;
* 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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