



COMMISSIONER FOR
BETTER REGULATION

GPO Box 4379
Melbourne Victoria 3001
Telephone: 03 9092 5800

11 April 2018

Mr Simon Cohen
Director
Consumer Affairs Victoria
121 Exhibition St
Melbourne VIC 3000

Dear Mr Cohen

REGULATORY IMPACT STATEMENT FOR THE ESTATE AGENTS (FEES) REGULATIONS 2018

I would like to thank your staff for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the proposed Estate Agents (Fees) Regulations 2018 (the Regulations). These Regulations are being proposed as the current arrangements sunset on 16 July 2018.

Under section 10 of the *Subordinate Legislation Act 1994* (the Act), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of all RIS prepared in Victoria. The Commissioner's role is to advise on the adequacy of the analysis presented in the RIS, rather than the merits or otherwise of policy or regulatory proposals. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise you that the final version of the RIS received by us on 11 April 2018 meets the adequacy requirements of the Act.

The proposed Regulations set fees for estate agent licenses and other related services provided by Consumer Affairs Victoria (CAV). The proposed Regulations only set fees — they do not prescribe the requirements that must be met in order for an individual estate agent or corporation to obtain a licence.

In the absence of fees, CAV's costs of licensing estate agents and related activities would be covered entirely by interest earned from the Victorian Property Fund (VPF). This fund comprises deposits held in estate agents' trust accounts, as well as fees and fines paid by estate agents. CAV notes that while, in the absence of fees, the costs of regulating real estate agents would therefore be recovered through the forgone interest on money held in trust by users of estate agents, this would be inequitable because not all users of estate agent services have money held in trust (page 22).

Compared to the existing fee settings, the proposed fees better reflect the resources involved in regulating real estate agents. CAV's introduction of new electronic services means that some tasks previously undertaken by CAV (such as obtaining copies of a licence application) can now be done online by estate agents themselves. This means that CAV no longer needs to charge a fee for such services, reducing regulatory burden on the sector.

Under the current regulations, there are several activities for which no specific fee is paid. New fee types are being proposed to recover some of the costs of these activities, such as processing:

- an application for permission to hold a licence or be employed as an agent's representative (a "permission application") by:
 - a person involved in a claim against the VPF;
 - a person who is bankrupt;
 - a person with a disqualifying criminal record; or
 - a corporation with disqualifying factors;
- a licence application for each director of a corporation;
- a permission application for each director of a corporation with disqualifying factors; and
- an annual licence statement for each director of corporation.

Under the proposed changes, corporations will no longer pay a single fee to be licensed. Instead, they will pay a fee to be licensed plus an additional fee for each of the corporation's directors to be licensed. This means that total fees paid will increase for corporations with two or more directors, and will decline for corporations with one director and for individual estate agents.

CAV estimates that the total costs of regulating real estate agents is around \$10 million per year, and that the proposed Regulations will raise fee revenue of around \$5 million per year. Compared to the other options considered in this RIS (which would recover the entire \$10 million cost of regulation through fees), CAV regards funding around half of the cost through fees as more equitable, because this 'substantially reduces the extent to which those who are already contributing to the cost of regulating estate agents through forgone interest are then contributing again through fees' (page 28).

CAV is planning to undertake a two-stage evaluation of the proposed Regulations, with the first stage intended to take place in 2020-21, and the second in the lead-up to the sunset of the proposed Regulations in 2028.

It is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation