

Estate Agents Council

Annual Report

2020-21

# 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 acknowledged the role COVID-19 played in its Annual Report 2020-21. For many people, the impacts of COVID-19 have been the most significant in living memory in terms of the ability to lease, buy or sell property and, in the case of agents, being able to conduct the necessary tasks of an estate agency business profitably.

It was not entirely manifest as of June last year in terms of the effects that the virus would have on the real estate sector, including particularly on agents.

The experience in 2020-21 was much more pronounced than expected. The state of disaster remained for a prolonged period of time before being downgraded to a state of emergency.

Three lockdowns within Victoria were in force in 2020-21, including a portion of the longest lockdown experienced anywhere in the country in the months of July, August and September. Each of those lockdowns affected estate agents in varying ways.

The Council elected to focus on these matters almost exclusively from July to December 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. All meetings in 2020-21 were conducted virtually. The Council behaved in a manner consistent with applicable restrictions in force within Victoria regarding work gatherings as per the directives of the Chief Health Officer, Prof. Brett Sutton.

# Minister Horne

The Council also wishes to recognise and thank Minister Horne for her stewardship and leadership of the Department during the period 2020-21.

Minister Horne has embraced the Council and has increased the contact between her office and Council since coming to the role. Meetings with the Minister were conducted virtually every six weeks in the second half of 2020 and were then extended to every three months in 2021.

The Council has therefore been able to make regular attendances upon the Minister to request updates on various matters and to address and identify matters for which the Council is to provide advice going forwards.

# Mission, vision and functions

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

### A fair real estate marketplace in which the public has confidence, the interests of vendors, buyers, renters 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 2020 – 21 there were seven members of the Council, which was reduced to six as of April 2021.

Patricia Roake’s role as Councillor ended in March 2021. The Council wishes to recognise her contributions to Council over two terms. Patricia Roake was a very talented Councillor who possessed significant technical skills in governance and administration of public policy as well as exceptional IT knowledge. Her contribution was very meaningful and Patricia shall be missed.

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 2020-21 was Mark Skermer and the Deputy Chair for 2020-21 was Mark Brooke.

Members were as follows as of 30 June 2021:

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| --- | --- | --- | --- |
| **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 |
| Prof. 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 |

Professor Louise Kloot’s role as Councillor has been extended by approval of the Governor in Council until 30 September 2021.

As of 30 June 2021, Consumer Affairs Victoria (CAV) in conjunction with Council has begun a process to fill each of the three vacant Council positions (two of which are now presently vacant and one of which will become available in October of 2021). This is a matter which the Council remains eager to conclude in order to restore Councillor numbers on Council. Interviews have commenced and have concluded for one Council position.

# Council Matters & Advice

The Council continued to work with and provide assistance to the Minister and CAV on the one hand and to provide advice and ask questions on the other 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, especially when taken in conjunction with recent wide scale reforms to the industry in the residential tenancies space;
2. The operation and effect of rent relief provisions and the messaging applied by the Victorian Government in terms of renters and their obligations regarding payment of rent during the pandemic, especially during July to December of 2020;
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. The Council focussed on discrimination in particular;
4. The operation of the Real Estate Reference Panel and attendances at the meetings convened;
5. The general requirements of the Office of the Victorian Information Commissioner as they relate to the security of Government and department data;
6. The operation of the Victorian Property Fund during the pandemic and whether the Minister anticipates initiating funding rounds;
7. The availability of online resources and training for agents during the pandemic, particularly for those operating in regional locations within the State;
8. Whether ongoing rent relief would be provided in the commercial and residential tenancy spaces;
9. The consideration of the current state of regulation of rooming houses within the State;
10. The consideration of the current state of education of estate agents within the State;
11. The treatment of Orders for possession by VCAT during the course of hearings;
12. The operation and effect of the case of Maringnage v Interstate Enterprises Pty. Ltd. [2020] VCAT 942 and what action was being taken to address same.

The Council routinely wrote to the Minister during 2020-21 in relation to the above matters.

# Guests at Council meetings

Minister Horne and senior officers of CAV attended meetings of the Council during 2020-21. Topics discussed at these meetings included policy and administration dealing with the pandemic, funding for VPF proposals and rooming houses amongst other matters.

# The Council

The Council receives reports from CAV in regards to matters such as legislation updates, case reports by the Estate Agents Resolution Service, 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 and is being tailored as time passes to respond to specific requests for advice from the Minister.

# 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;
* 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.

The Council wishes to acknowledge the guidance and assistance provided by CAV, especially in relation to resource materials kindly provided regarding discrimination in the rental market, the regulation of rooming houses and the education of estate agents.

The Council also wishes to acknowledge receipt of a Members Guide which was provided to Council in January of 2021.

# Council secretary

Secretarial assistance to the Council was provided by Maria Maikousis, Senior Executive Services Co-Ordinator, Information and Corporate Services - 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: 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 2021-22.

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 its continued administration of same.

# Monitoring function

The Council continued to monitor numerous issues including the effects of COVID-19 on the industry as discussed above, compliance and enforcement, concerns around property management and kept abreast of developments on the national agenda.

**Most important issues in 2020 – 21**

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

A very significant issue now facing the industry concerns the education of agents around compliance regarding the amendments to the *Residential Tenancies Act 1997* (Vic) and the effects that they are having both on estate agents but also residential rental providers. The Council shall continue to monitor this issue.

# Conclusion

The Council considers that its 2021 - 22 agenda will include the following (which includes work to be completed as part of the Council’s workplan):

* 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;
* Regional versus metropolitan experiences;
* Automatic mutual recognition of occupational licensing;
* The effect and timing of residential tenancy matters, particularly in relation to the *Residential Tenancies Act 1997* (Vic) as amended especially in relation to compliance by agents and the broader effects on supply within the industry given the departure of a segment of the market;
* Engaging rental providers in the residential tenancies reforms and advising in relation to those reforms more broadly;
* 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 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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