



REIV THE STANDARD
FOR SUCCESS

SUBMISSION

ESTATE AGENTS REGULATIONS
PROFESSIONAL CONDUCT

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ABOUT REIV

The Real Estate Institute of Victoria has been the peak professional association for the Victorian real estate industry since 1936.

Over 2,000 real estate agencies in Victoria are members of the REIV. These members are located in city, rural and regional areas.

The businesses employ more than 10,000 people in Victoria in a market which handles over \$100 billion of transactions totalling 30 per cent of GSP.

Members specialise in all facets of real estate, including: residential sales, commercial and industrial sales, auctions, business broking, buyer's agency, property management, owners' corporations management and valuations.

Introduction

The REIV is the peak professional association for the Victorian real estate industry, representing a significant number of the state's licensed estate agents and agent's representatives.

The proposed Estate Agents (Professional Conduct) Regulations 2018 will have a substantial impact on the conduct of Victorian agents.

Disappointingly, the majority of the REIV's feedback to this review has been ignored with many of the proposed changes simply duplicating existing property legislation and provisions from the Australian Consumer Law. The REIV considers duplication of existing statutory requirements in Regulations is undesirable.

The REIV does not support the majority of the proposed Regulations and calls on Consumer Affairs Victoria to remove these unnecessary insertions.

REIV Response

The following outcomes were gained from the member consultation process.

Regulation 10 (1) - Fairness and honesty

The inclusion of 'in good faith' adds nothing to the obligation for agents to '...act fairly and honestly...' under Regulation 11 (1) of the 2008 Regulations, as the wording already incorporates the requirements of 'good faith'. Including 'in good faith' is simply adding a synonym for 'fairness and honesty'.

Recent Victorian Supreme Court decisions (North East Solution Pty Ltd v. Masters Home Improvement Australia Pty Ltd [2016] VSC 1 [paras 59, 60, 62] and Masters Home Improvement Australia Pty Ltd v. North East Solution Pty Ltd [2017] VSCA 88 [para 99]) indicate the wording of the existing Regulation 11 (1) incorporates the obligation to act 'in good faith'. As such, the proposed addition of 'in good faith' is not required.

The REIV considers, from a compliance perspective, that the existing Regulation 11(1) wording is preferable. Agents and agent's representatives are more likely to have an understanding of what is required of them if the phrase 'act fairly and honestly' is retained without creating potential confusion by adding the synonym 'in good faith'.

Regulation 10 (3) - Fairness and honesty

This Regulation unnecessarily duplicates statutory obligations imposed on agents and agent's representatives by Sections 18 and 30 of the Australian Consumer Law (ACL). The Estate Agents (Professional Conduct) Regulations should not duplicate obligations applying under the ACL. So far as enforcement is concerned, the REIV notes recent litigation conducted by the Director in the Federal Court indicates, a preference for applying the Australian Consumer Law to instances of misleading conduct.

Regulation 16 (2)

Feedback from REIV members indicates this Regulation is unnecessary as it already occurs in the normal course of real estate business. In order to comply with the Estate

Agents Amendment (Underquoting) Act 2016, agents are required to inform a potential buyer that their offer will not be submitted to the owner if the agent has received written instructions from the vendor.

Regulation 18 - Maintenance or repairs of rental property

As outlined in earlier submissions, the REIV does not believe specific rules relating to property management should be introduced as the ACL provides existing safeguards for consumers. The REIV strongly opposes Regulation 18 in its entirety as these obligations are already captured by the Residential Tenancies Act and the ACL. CAV's position that 'the ACL provisions are insufficient with respect to an agents (sic) obligations to tenants as tenants are not purchasing the services of estate agents and, therefore, are not dealing with trade and commerce with agents' is out of step with current action taken by the regulator. CAV frequently instigates proceedings against agents for deceptive and misleading conduct in their dealings with prospective buyers. This is despite the majority of prospective buyers not purchasing the services of a real estate agent – in the same way tenants are covered by the ACL irrespective of whether there was a financial transaction involved. Poor conduct by agents is captured by the ACL regardless of whether that poor conduct occurs in a selling or leasing environment.

If these provisions are to remain, the REIV considers it crucial that the following changes occur:

The Regulation, as currently worded, fails to recognise managing a property may not include responsibilities for maintenance or repairs. Whether that is so depends on the terms of the agent's engagement. Accordingly, the REIV considers the words 'and management includes the maintenance or repair of the rental property' need to be added after '... landlord ...' in line four.

The words '... and in accordance with all relevant laws ...' be deleted from lines five and six as it is unclear how

they add anything to the obligation other than to create confusion. The Regulation is improved if they are removed. If a law has to be observed in carrying out maintenance or repairs, it applies in any event.

Furthermore, it is noted that Regulation 18(2) refers to 'tenancy agreement', a defined phrase in the Residential Tenancies Act, typically associated with residential property. Accordingly, the REIV considers it essential that Regulation 18(1) clarifies whether the requirement applies to all real estate or only residential real estate.

It is also noted that 'maintenance' is omitted from Regulation 18 (2).

Regulation 19 - Acting for a purchaser as a buyer's agent

The REIV considers this Regulation to be unnecessary as communication of offers by an estate agent are already covered by Regulation 16 (1), regardless of whether the agent is working for a vendor or a buyer. Regulation 16(1) refers to offers to 'purchase, sell or lease real estate or a business'. The REIV urges CAV to remove this duplicated Regulation.

Regulation 20 (2) - Dispute resolution procedures

The REIV strongly opposes requiring real estate agencies to list a contact person and their details as part of the dispute resolution process. This Regulation exposes real estate staff to potentially unnecessary workplace risks, including abuse.

Feedback from REIV members indicates the provisions of a dispute resolution process on the agency's website as well as an online complaints form is adequate and appropriate. Interestingly, CAV's website does not provide the name, position or contact details of the person or persons responsible for handling complaints.

Regulation 21 - Dispute resolution procedures

Input from REIV members suggests the inclusion of the word 'written' before the word 'procedures' in Regulation 20 would remove the need for Regulation 21.

Summary

The REIV thanks Consumer Affairs Victoria for the opportunity to provide feedback to the draft Estate Agents (Professional Conduct) Regulations 2018.

As outlined above, the REIV would like to see substantial changes to these Regulations before they are finalised and remade.

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