



REIV THE STANDARD
FOR SUCCESS

SUBMISSION

ENGINEERS REGISTRATION BILL

March 2018



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.

REIV member agencies 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, buyers' agency, property management, owners' corporations management and valuations.

REIV Response

ENGINEERS REGISTRATION BILL 2018

As a general introduction it should be noted that the REIV does not hold a great stake in the profession of engineering save for the fact that sound construction and infrastructure is a desirable outcome for any project. Failure in any of these areas results in the built environment becoming unsafe and unattractive to those who occupy buildings either as resident, occupier or visitor as well as those who use infrastructure.

The REIV does however have a view on the expansion of the role of Business Licensing Authority (BLA) generally, and Consumer Affairs Victoria (CAV) specifically, in the registration or licensing of any property related profession. It is the REIV's firm view that CAV should not be a regulator or even a co-regulator in the construction (building or civil) industry or the property industry.

The property industry, including the construction industry in Victoria, contributes significantly to this State's revenue.

The primary focus of CAV is, or if it is not should be, the protection of consumers in Victoria. This focus is at odds with effective regulation of the property and construction sectors.

This is already evident in the co-regulation of domestic builders by the Victorian Building Authority and CAV, where there is great uncertainty and even greater mistrust of the role CAV plays in this space. The deliberate move by the current Government to create the illusion of a 'Chinese Wall' separation between the Domestic Building Dispute Resolution Victoria and CAV is one example. The DBDRV has been placed conspicuously in the Justice Department, still under the governance of the Director of Consumer Affairs - albeit under his alternate title of Deputy Secretary Regulation. The reality is, however, that CAV still operates as the regulator and investigator against domestic builders and is able to create, amend and remove legislation governing the building contracts under the Domestic Building Contracts Act 1995.

It is important to note the propensity of CAV to focus not on the Victorian legislation when dealing with conduct in

the construction and property industries, but rather to rely heavily on the Australian Consumer Law.

It could be argued that if CAV is so wedded to the utilisation of the ACL in its investigations then there is no need for it to have a specific role in the Victorian legislation governing the operations of the construction and property industries. The ability and capacity to take action under the ACL would apply irrespective of whether CAV holds specific state legislative functions or powers, or whether BLA operates as the licensing body.

The REIV would argue that BLA is an inappropriate licensing body for the construction and property industries. It is our view that the BLA is largely a record keeper for CAV and does not adequately perform the function of a licensing authority.

The REIV provides the following examples using the current Underquoting legislation. CAV has taken action against a number of real estate agents for breaches of the ACL for deceptive and misleading conduct relating to underquoting. Significant fines have been handed down by the Federal Court in conjunction with a number of enforceable undertakings. The parameters for choosing which action to take are unclear. For example, why are some agents prosecuted with no option to enter into an enforceable undertaking while others, with a greater or similar number of offences are not taken to court and are offered the less punitive option?

Notwithstanding fines approaching one million dollars against some agents recently, there has been no follow-up action by the BLA or CAV against the licence of those estate agents. While CAV and the State Government are keen to publicise the significant fines for offences some 3-5 years ago, the agents are allowed to continue to work in real estate and no action is taken by BLA in regard to their licence. It appears that the focus is more on the denunciation of the offences in order that there can be significant 'chest beating' and an injection of revenue into state coffers, than protection of the public.

The previous Coalition Government had on its legislative

agenda the will to remove CAV from the regulation of domestic builders in its Building Legislation Amendment Bill 2014. This move was opposed quite strongly by CAV but supported by the building industry.

There was a pervading view that the opposition from CAV was largely about the apportionment of the domestic building disputes levy. Should the Government be successful with this proposed Bill, one has to question whether CAV and/or BLA will seek now, or in the future, additional revenue from the building permit level garnered by the BLA. Alternatively, is this the first step to removing the VBA from the building and construction space.

Rather than looking to expand CAV's regulatory responsibility for certain professions, there should be a focus on ensuring that any regulator for the construction or property industry is able to balance the best interests of the industry/profession with consumer protection. CAV by its very nature is not able to this as its first priority is consumer protection. By its very title it is unbalanced against the professions in favour of the consumer. This was very clear in the proposals for amendment of the Residential Tenancies Act, which saw the vast majority of proposed amendments acting clearly in favour of the tenant against that of the landlord. In fact even the consultation process largely ignored the landlords and was heavily weighted in favour of the tenants and tenant advocacy bodies.

REIV has great concern that an expansion of investigative powers for CAV will further dilute the rights of practitioners in all fields. We see this now in the 'audits' conducted by CAV

in the building industry and the real estate industry. It is apparent to our members that those conducting audits do not have the requisite knowledge or experience of the real estate industry to conduct these audits. Furthermore, the powers of entry are often founded under the ACL, rather than state laws.

The REIV has also seen a diminution of the expertise of those in the CAV call centres dealing with real estate enquiries. While the effectiveness of this service is espoused, the on the ground feedback is that all too often incorrect information is provided, no advice is provided, or the operator recommends calling the REIV. It should be noted that the REIV once held this function subsidised by the Victorian Property Fund.

Now is the time for Governments of all persuasions to be considering industry bodies to play a greater role in the accreditation or assessment of applicants for registration or licensing – much akin to what is in this proposal.

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