

# **Estate Agents (Fees) Regulations 2018**

## **Regulatory Impact Statement**

**Consumer Affairs Victoria**  
**April 2018**



COMMISSIONER FOR  
BETTER REGULATION

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11 April 2018

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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**

## Estate Agents (Fees) Regulations 2018 Regulatory Impact Statement

This Regulatory Impact Statement (RIS) has been prepared to fulfil the requirements of the *Subordinate Legislation Act 1994* and the Victorian Guide to Regulation, and to facilitate public consultation on the proposed Estate Agents (Fees) Regulations 2018 (the proposed Regulations). The aim of the proposed Regulations is to prescribe the fees for estate agent licensing and related applications for the purposes of the *Estate Agents Act 1980*. A copy of the proposed Regulations is provided at Appendix 4 of this RIS.

The aim of this RIS is to explain the background to and objectives of the proposed Regulations, identify some alternative options for meeting those objectives, and estimate the costs and benefits of the proposed Regulations and the alternative options. In this way, the RIS will assist members of the public to provide comment on the proposed Regulations.

Public comments and submissions are invited on the proposed Regulations, in response to the information provided in this RIS. All submissions will be treated as public documents, and will be available to other stakeholders either by being posted on the Consumer Affairs Victoria website at [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au), or under the *Freedom of Information Act 1982*.

Written comments and submissions should be forwarded no later than the close of business on Friday 25 May 2018 to:

Estate Agents (Fees) Regulations RIS Submissions  
Policy and Corporate Services  
Consumer Affairs Victoria  
GPO Box 123  
Melbourne VIC 3001  
or  
[cav.consultations@justice.vic.gov.au](mailto:cav.consultations@justice.vic.gov.au)

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## Acronyms and Terms

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Acronyms/Terms	Description
ABS	Australian Bureau of Statistics
ALPAA	Australian Livestock and Property Agents Association
BLA	Business Licensing Authority
CAV	Consumer Affairs Victoria
Estate Agents Act	<i>Estate Agents Act 1980</i>
The proposed Regulations	Proposed Estate Agents (Fees) Regulations 2018
REIV	Real Estate Institute of Victoria
RIS	Regulatory Impact Statement
RTBA	Residential Tenancies Bond Authority
The 2007 Regulations	Estate Agents (Fees) Regulations 2007
VPF	Victorian Property Fund

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## Executive Summary

The Estate Agents (Fees) Regulations 2007 (the 2007 Regulations) sunset on 16 July 2018 and must be remade before that date with the new fees to commence on 1 July 2018.

The 2007 Regulations set out a number of fees to support the *Estate Agents Act 1980* (the Estate Agents Act) including estate agent licensing fees (new application and annual licence statement), penalty licensing fees (late lodgement, extension of time, etc.) and fees for accessing the public register of estate agents and agents' representatives.

In order to remake the 2007 Regulations, Consumer Affairs Victoria (CAV) is reviewing the fees for estate agents. This Regulatory Impact Statement (RIS) forms a key part of the review.

The structure of the RIS includes seven sections covering the context of the RIS, the problem and objectives of the proposed Regulations, the options for fees for estate agents and related transactions, assessment of the fee options, and consultation, implementation and evaluation.

### Section 1 – Context

This section outlines the estate agency sector, the licensing requirements, current fees and relevant work that has impacted the regulation of estate agents, such as the Consumer Property Law Review and efficiency improvements that have been made to the processing of estate agent transactions.

### Section 2 – Problem and Objectives

This section identifies the issue of recovering the costs of regulating estate agents and ensuring that those who incur higher costs are charged appropriate fees for the greater demand on resources.

While this section confirms the general government policy that fees be set to fully recover the costs of regulation, it also notes that by forgoing interest on money held in trust by estate agents for property transactions, consumers of estate agency services are already contributing to the cost of regulating estate agents.

### Section 3 – Options

This section discusses the proposed changes to be made to estate agent fees, including the removal of certain fees, such as the fee for a rural branch manager's licence and a fee to inspect the register; as well as new proposed fees, including a fee to obtain permission to hold an estate agent's licence by a person who is bankrupt, is the cause of a claim on the Victorian Property Fund (VPF) or has a criminal record.

The ways in which fees have been estimated are summarised in this section, with further details provided in Appendix 3.

This section also presents and discusses the base case, where no fees are set for estate agents and others, and four options with different fee structures. The fees in options 1, 2 and 3 are based on full cost recovery through licensing fees while the fees for Option 4 propose cost recovery through a combination of licensing fees and a subsidy from the VPF. The four fee options are:

- **Option 1** – full cost recovery through a fee structure that reflects efficiency improvements and the proposed changes mentioned above and further detailed in section 3.1, as well as a fee to suspend, cancel or surrender a licence
  - **Option 2** – is the same as Option 1, but includes a new licence fee and annual licence statement fee for each director of a corporation
  - **Option 3** – is the same as Option 2, but excludes the fee to suspend, cancel or surrender a licence – the cost of these transactions are distributed across the annual licence fees for estate agents, and
  - **Option 4** – is the same as Option 3 adjusted for a funding subsidy from the VPF. This is the preferred option in this RIS.
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Table 1 summarises the proposed fees for each of these options.



**Table 1: Summary of proposed fees under each option compared to the current fees (2017-18) – (An empty cell indicates that no fee is charged or proposed to be charged.)**

Fee description	Current Fees	Option			
		Option 1 Full cost recovery	Option 2 Full Cost Recovery + Directors	Option 3 Full Cost Recovery + Directors + Cost Subsidisation	Option 4 Partial Cost Recovery (Preferred Option)
Estate agent new licence – corporation	\$749.39	\$1,052.95	\$693.24	\$693.24	\$395.15
Estate agent new licence – for each director	-	-	\$538.77	\$538.77	\$269.39
Estate agent new licence – individual	\$432.71	\$836.71	\$651.47	\$651.47	\$371.34
Estate agent permission – individual – VPF claim	-	\$1,324.06	\$1,138.82	\$1,138.82	\$1,138.82
Estate agent permission – individual – insolvency	-	\$1,324.06	\$1,138.82	\$1,138.82	\$1,138.82
Estate agent permission – individual – criminal record	-	\$1,324.06	\$1,138.82	\$1,138.82	\$1,138.82
Estate agent permission – corporation	-	\$2,105.59	\$1,157.57	\$1,157.57	\$1,157.57
Estate agent permission – for each director	-	-	\$904.18	\$904.18	\$904.18
Estate agent annual licence statement – corporation	\$475.94	\$649.19	\$450.93	\$458.86	\$206.49
Estate agent annual licence statement – for each director	-	-	\$438.49	\$438.49	\$188.55
Estate agent annual licence statement – individual	\$216.29	\$636.17	\$450.93	\$458.86	\$206.49
Estate agent – extension of time – annual licence	\$64.56	\$124.87	\$95.82	\$95.82	\$95.82
Estate agent – late lodgement – annual licence	\$168.79	\$121.79	\$92.74	\$92.74	\$92.74
Branch manager – annual approval	\$64.56	\$117.34	\$88.29	\$88.29	\$39.73
Branch manager – extension of time – annual approval	\$64.56	\$124.87	\$95.82	\$95.82	\$95.82
Branch manager – late lodgement – annual approval	\$64.56	\$121.79	\$92.74	\$92.74	\$92.74
Rural branch manager – new licence	\$10.24	-	-	-	-
Rural branch manager – annual licence	\$91.72	-	-	-	-
Rural branch manager – late lodgement – annual licence	\$64.56	-	-	-	-
Rural branch manager – extension of time – annual licence	\$64.56	-	-	-	-
Beneficial interest sale	\$173.06	-	-	-	-
Duplicate licence	\$64.56	-	-	-	-
Search or inspect register	\$64.56	-	-	-	-
Search for or inspect other record	\$64.56	-	-	-	-

<b>Fee description</b>	<b>Current Fees</b>	<b>Option 1 Full cost recovery</b>	<b>Option 2 Full Cost Recovery + Directors</b>	<b>Option 3 Full Cost Recovery + Directors + Cost Subsidisation</b>	<b>Option 4 Partial Cost Recovery (Preferred Option)</b>
Copy or extract of register	\$64.56	\$115.00	\$85.94	\$85.94	\$85.94
Copy or extract of other record	\$64.56	-	-	-	-
Register certificate	\$64.56	\$136.60	\$107.55	\$107.55	\$107.55
Surrender, suspension or cancellation of licence	-	\$174.09	\$145.03	-	-

## Section 4 – Options Assessment

A multi-criteria analysis has been applied to assess the options summarised above. This section identifies and discusses the three criteria that the options are assessed against – efficiency, effectiveness and equity.

The options are then assessed against those criteria, suggesting that Option 4 is the preferred fee structure.

Option 4 is the preferred option because fees are charged according to the greater demand on resources. Option 4 does this through separate fees for permission applications and also for directors, meaning that the fee for each corporation is based on the number of its directors instead of the arrangement under the current fee structure where smaller corporations subsidise larger corporations. Through a subsidy from the VPF, Option 4 also recognises the contribution that consumers of estate agency services make to the cost of regulation by forgoing interest on moneys held in trust by estate agents.

Under the preferred option, these fees are expected to raise around \$4.79 million in fee revenue per year.

## Section 5 – Small business and competition assessments

This section reports on the small business and competition assessments of the proposed Regulations, and concludes that the preferred fee structure will not have a negative impact on the operation of estate agency businesses.

## Section 6 – Consultation and Implementation

This section summarises the consultation that has been undertaken in developing this RIS, and also how the proposed Estate Agents (Fees) Regulations 2018 (the proposed Regulations) are likely to be implemented. The Real Estate Institute of Victoria (REIV) and the Australian Livestock and Property Agents Association (ALPAA) were consulted in 2016 on the development of the preferred fee option set out in this RIS.

The key component of implementation will be to ensure the sector is aware of and prepared for the new fees for estate agents that will commence on 1 July 2018. CAV intends to distribute information and educate the sector about any proposed changes through a number of avenues including emails, letters and newsletters to licensed estate agents, updates on the CAV website and industry channels.

## Section 7 – Review and evaluation

This section summarises how the proposed Regulations are likely to be evaluated. It proposes a two-staged evaluation with the overall objectives of the evaluation being to consider the impact of relevant legislative changes arising from the Consumer Property Law Review, determine whether the new fees are recovering the intended proportion of the cost of regulation, and consider the impacts of the proposed new fee structure.

## 1. Context

### 1.1. Victorian estate agency sector

Nationally, the Australian Bureau of Statistics (ABS) figures show that in 2015-16, total income relating to businesses that identify as 'property operators and real estate services'<sup>1</sup> was \$131.3 billion (of which \$102.9 was from 'sales and service income'), total expenses were \$71.8 billion and operating profit before tax was \$59.3 billion<sup>2</sup>.

While specific figures for individual states and territories are not publically available, the ABS found that Victoria contributed 24.9 per cent of total sales and service income across selected industries and 24.6 per cent of total wages and salaries<sup>3</sup>. Assuming the same percentage contribution, this suggests that total income relating to Victorian property operators and real estate services was \$32.7 billion with total expenses of \$17.7 billion<sup>4</sup>.

Research from IbisWorld provides alternative figures<sup>5</sup>, estimating revenue associated with real estate services<sup>6</sup> in Australia for 2016-17 at \$14.2 billion, with profit of \$2.4 billion. The total number of businesses is estimated at 38,325 with 20.1 per cent of these located in Victoria. This suggests that 7,703 real estate businesses are located in Victoria.<sup>7</sup>

According to the register of estate agents maintained by the Business Licensing Authority (BLA)<sup>8</sup>, there were 13,230 licensed estate agents (individuals and corporations) as at the end of 2016-17. Table 2 shows the number of estate agent applications and licensed estate agents over the preceding seven years.

**Table 2: Estate agents in Victoria between 2010-11 and 2016-17**

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Total number of estate agents on the register (individuals and corporations)	9,476	10,045	10,565	11,171	11,679	12,458	13,230
New applications lodged	1,216	1,190	1,081	1,219	1,216	1,582	1,581

### 1.2. Legislative framework

The Estate Agents Act establishes a licensing scheme for estate agents and regulates who can work in real estate in Victoria. The current definition of 'estate agent' captures people who exercise, carry on or advertise that they are willing to:

<sup>1</sup> Primary activities under the 'property operators and real estate services' classification include the renting and leasing of residential and non-residential properties, as well as the valuing, purchasing, selling and managing of real estate for others.

<sup>2</sup> ABS 2017, Australian Industry 2015-16, Cat. 8155.0.

<sup>3</sup> Ibid.

<sup>4</sup> The most recent specific Victorian data appears to be from 2002-03 (ABS 2004, Real Estate Services Australia 2002-03, Cat. 8663.0), which indicated that total income of Victorian real estate agents in 2002-03 was \$1,372.3 million.

<sup>5</sup> The differences in figures between the ABS and IbisWorld are likely due to the way real estate services have been defined and therefore the scope of the industry that has been measured.

<sup>6</sup> The primary activities identified by IbisWorld are conveyancing, real estate management, body corporate management and brokering, and valuing of real estate.

<sup>7</sup> IBSWorld Industry Report L6720, Real Services in Victoria, September 2017.

<sup>8</sup> An independent statutory regulator supported by Consumer Affairs Victoria.

- sell, buy, exchange, let or take on the lease of any real estate or business on behalf of another person
- negotiate the sale, purchase, exchange, letting or taking on of a lease of any real estate or business on behalf of another person, or
- collect rents for any real estate or business on behalf of another person.

A licence authorises an estate agent to operate anywhere in Victoria and may be issued to an individual or a corporation. The term of a licence is perpetual – meaning that it is ongoing until it is surrendered, suspended or cancelled but must be updated each year through an annual licence statement process.

A person who holds an individual estate agent’s licence may be employed by another estate agent or may own and/or manage an estate agency business as a sole trader, in partnership with another estate agent or through a corporation. A corporation must hold an estate agent’s licence in its own right.

An agent’s representative is a person who is employed by, or acts for or on behalf of an estate agent. An agent’s representative who has the written authority of an estate agent can perform the legal functions of that agent as specified in the authority. An agent’s representative does not hold a licence.

The eligibility criteria for employment as an agent’s representative are set out in the Estate Agents Act. However, it is the responsibility of an estate agent employer to assess that those criteria are met, to appoint an agent’s representative and to enter their details on the register.

Estate agent licences are issued by the BLA, a statutory authority established under the *Business Licensing Authority Act 1998*. The BLA works closely with CAV, which is responsible for administering the Estate Agents Act. This includes informing consumers and estate agents about the regulatory requirements, receiving and resolving complaints about estate agents, monitoring agents’ compliance with the regulatory requirements and preparing the legislative instruments required under the Estate Agents Act, such as regulations.

Section 99 of the Estate Agents Act provides authority for the Governor-in-Council to make regulations prescribing fees for the licensing of estate agents and related transactions. The 2007 Regulations prescribe the current fees for the purposes of the Estate Agents Act. They include, among others, the fee for:

- a new estate agent’s licence (individual and corporation)
- an annual licence statement for an estate agent (individual and corporation)
- late lodgement of an annual licence statement for an estate agent (individual and corporation)
- an extension of time for lodging an annual licence statement for an estate agent (individual and corporation), and
- inspection of the public register<sup>9</sup>.

The full list and further details of the fees that are currently prescribed are included in Appendix 1.

This RIS is concerned with the fees for the proposed Regulations, which will replace the 2007 Regulations. The 2007 Regulations will sunset on 16 July 2018 and must be remade before that date.

## 1.3. Licensing of estate agents

### 1.3.1. Individual and corporation licences

Under the Estate Agents Act there are three ways in which a person may become eligible to be granted an estate agent’s licence as an individual.

The criteria for the most common type of application by an individual for an estate agent’s licence include that a person must be at least 18 years of age, have passed a prescribed course<sup>10</sup> and have the equivalent of one

<sup>9</sup> The public register is established under section 33 of the Estate Agents Act and provides public access to information about licensed estate agents, agents’ representatives and others involved in estate agency businesses in Victoria.

<sup>10</sup> Estate Agents (Education) Regulations 2008.

year of full time employment as an agent's representative within the last three years.

Alternatively, an individual may also be eligible to be granted an estate agent's licence if they:

- have held an equivalent licence in another Australian state or territory or overseas and can demonstrate that they have adequate knowledge of Victorian estate agency law, practice and procedure, or
- have held an estate agent's licence within the five years immediately preceding their licence application.

An individual is ineligible to be granted an estate agent's licence if, they:

- are insolvent
- have a disqualifying criminal record
- are a represented person under the *Guardianship and Administration Act 1986*
- are the cause of a claim against the VPF, or
- are disqualified from holding an individual estate agent's licence anywhere in Australia or elsewhere.

An individual has a disqualifying criminal record if within the last 10 years, they have been convicted or found guilty (whether or not a conviction was recorded) of an offence involving fraud, dishonesty, drug trafficking or violence, which is punishable by imprisonment of three months or more (whether or not a sentence of imprisonment was imposed).

For a corporation to be eligible for an estate agent's licence it must have an officer in effective control<sup>11</sup> who holds an individual estate agent's licence and its directors must meet certain eligibility criteria. A corporation can appoint only one estate agent to act as the officer in effective control, and under corporations law must have at least one director.

A corporation is automatically ineligible to be licensed if it is under external administration, or if any of its directors:

- is a represented person
- has a disqualifying criminal record
- has been the cause of a claim against the VPF, or
- is disqualified from holding an individual estate agent's licence anywhere in Australia or elsewhere.

Applicants for an estate agent's licence (individual and corporation) who meet the above criteria are required to:

- complete the relevant application form
- provide appropriate documentation in support of their application
- lodge the application, and
- pay the prescribed fee.

After obtaining an estate agent's licence, an individual or corporation must submit their annual licence statement and pay the prescribed fee on the anniversary of the date they were first granted a licence. The statement must be in a form approved by the BLA that is signed by the agent or by the officer in effective control of the corporation. The statement must contain any information and be accompanied by any documents required by the BLA.

If an annual statement is not lodged by the due date a late fee applies. In exceptional circumstances, the BLA may grant an extension of time to lodge an annual statement and fee. An application for an extension of time

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<sup>11</sup> An officer in effective control works at the principal office of the corporation, must be regularly at that office, is fully accountable for the overall day-to-day operations of the estate agency at all offices where the corporation carries on business, and does not need to be a director of the corporation.

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must be accompanied by the prescribed fee.

Up until 1995, agents' representatives (then known as sub-agents) could apply for approval to manage a branch office provided they met certain criteria. While no new branch manager approvals may be granted, those previously granted may continue as long as they are updated each year.

### 1.3.2. Permission applications

A person who is ineligible to be granted an estate agent's licence because they are insolvent, have a disqualifying criminal record or have been the cause of a claim against the VPF, may apply to the BLA for permission to hold an estate agent's licence or be employed as an agent's representative.

Similarly, a corporation that is ineligible to be granted an estate agent's licence because any of its directors has a disqualifying criminal record or has been the cause of a claim against the VPF, may apply for permission to be granted a licence.

An application for permission must be in the form approved by the BLA and accompanied by the required information, documentation and any fee. The BLA may grant permission if it is not contrary to the public interest. No fee is currently prescribed for a permission application.

## 1.4. Current fees

The 2007 Regulations prescribe 20 different fees for estate agents and related transactions that are payable to the BLA. In 2017-18, the total revenue collected from these fees is estimated to be \$4.69 million.

Of the fees prescribed in the 2007 Regulations, the fee for a rural branch manager's licence and the fee for permission to make a beneficial interest purchase of property under section 55(14) of the Estate Agents Act<sup>12</sup> no longer apply as the relevant sections of the Estate Agents Act were repealed in 2010-2011.

Table 3 outlines the fees prescribed in the 2007 Regulations and the number of estate agent and related transactions expected in 2017-18.

**Table 3: Estate agent fees and transactions in 2017-18**

Fee Description	Fee Units <sup>13</sup>	Current Fees	Expected Number of transactions
Estate agent new licence – corporation	52.70	\$749.39	580
Estate agent new licence – individual	30.43	\$432.71	1,096
Estate agent annual licence statement – corporation	33.47	\$475.94	3,307
Estate agent annual licence statement – individual	15.21	\$216.29	9,103
Estate agent – extension of time – annual licence	4.54	\$64.56	4
Estate agent – late lodgement – annual licence	11.87	\$168.79	1,451
Branch manager – annual approval	4.54	\$64.56	46
Branch manager – extension of time – annual approval	4.54	\$64.56	1
Branch manager – late lodgement – annual approval	4.54	\$64.56	1
Rural branch manager – new licence	0.72	\$10.24	0

<sup>12</sup> This relates to an estate agent purchasing real estate or a business, which he or she is commissioned to sell.

<sup>13</sup> Fee units are prescribed under the *Monetary Units Act 2004* and automatically indexed each year for inflation on 1 July. The value of a fee unit set on 1 July 2017 is \$14.22.

Fee Description	Fee Units <sup>13</sup>	Current Fees	Expected Number of transactions
Rural branch manager – annual licence	6.45	\$91.72	0
Rural branch manager – late lodgement – annual licence	4.54	\$64.56	0
Rural branch manager – extension of time – annual licence	4.54	\$64.56	0
Beneficial interest sale	12.17	\$173.06	0
Duplicate licence	4.54	\$64.56	67
Search or inspect register	4.54	\$64.56	2
Search for or inspect other record	4.54	\$64.56	2
Copy or extract of register	4.54	\$64.56	2
Copy or extract of other record	4.54	\$64.56	2
Register certificate	4.54	\$64.56	9

In 2017-18, the BLA expects to process 15,653 transactions that have a prescribed fee under the 2007 Regulations and collect \$4.69 million in fees revenue.

The current fees do not cover the costs of all estate agent and related transactions. For example, some transactions that CAV routinely processes do not have a fee prescribed under the 2007 Regulations, such as applications for permission by individuals and corporations who are ineligible to hold or continue to hold a licence or to work in the estate agency industry.

In addition, there are some inequities with the current fees. For example, while the prescribed fees for corporate licences include an amount to cover the cost of checking the eligibility of directors, this amount is based on the average processing costs, regardless of the number of directors a corporation may have.

Selected estate agent fees in other jurisdictions are set out in Appendix 2.

## 1.5. Consumer property law review

CAV recently completed a review of Victoria's consumer property laws, which includes the Estate Agents Act along with the *Owners Corporations Act 2006*, the *Conveyancers Act 2006* and the *Sale of Land Act 1962*.

The terms of reference for the review included:

- identifying opportunities to modernise and improve the legislation, taking into account stakeholders' experiences and industry developments since each Act came into operation
- examining whether the legislation efficiently and effectively regulates the conduct of licensed practitioners involved in the sale of land, real estate transactions and management of owners corporations, and
- recommending changes to improve the way the legislation operates.

Public consultation on a series of three issues papers was completed in 2015-16 while public consultation on a paper presenting options to reform the Estate Agents Act was completed in May 2017. No submissions to the issues or options papers raised concerns regarding the fees charged for the regulation of estate agents.

A package of proposals to reform the Estate Agents Act is currently being developed for consideration by the



Victorian government. Any new legislation arising from the reform package may impact on the licensing of estate agents and, in turn, the fee structure. However, any new legislation must first be introduced into and passed by Parliament, which is unlikely to occur before the 2007 Regulations sunset in July 2018.

Therefore, depending on the nature of any legislative changes arising from the Consumer Property Law Review, the proposed Regulations may need to be amended at a later time.

## 1.6. Efficiency improvements

Since the fees were last reviewed in 2007, CAV has implemented improvements in the way it processes estate agent licence applications and related transactions. This has meant that certain processes are no longer undertaken, such as:

- asking questions when an estate agency intends to share premises with another business
- asking questions when a proposed principal office is an agent's representative's residential address
- making inquiries where an officer in effective control is not a director of a corporation, or has a residential address outside of Victoria
- verifying the status of a visa
- requesting corporate trustee information, and
- asking for fax numbers.

The information collected through these processes was not considered to meaningfully contribute to decisions regarding the granting of licences. Since these processes have been discontinued, no issues have arisen that impact on the integrity of the licensing processes.

Further efficiency improvements were implemented in 2017 to facilitate online applications and transactions. These improvements have further reduced the time required to process transactions related to the regulation of estate agents.

These efficiency improvements have allowed CAV to change the way its resources are allocated to the administration of the regulatory scheme for estate agents.

The way in which costs have been estimated in this RIS include these efficiency improvements.

## 2. Problem and objectives

### 2.1. Nature and extent of problem

The licensing process provided under the Estate Agents Act involves assessing the suitability of potential applicants wishing to work as an estate agent or to operate an estate agency business. In doing so, the licensing scheme helps overcome the disputes, harms and costs that could otherwise be faced by consumers from the information asymmetry that exists between them and estate agents.

Information asymmetry arises from consumers' lack of knowledge about an agent's competence, reliability and honesty, which makes identifying a suitable estate agent costly. For many consumers, real estate is their largest single purchase and most valuable asset. Therefore, the potential for financial harm arising from incompetent or improper services by estate agents is significant.

However, as it is the Estate Agents Act that imposes the requirement that estate agents be licensed, this RIS does not discuss the broader problem addressed by regulating estate agents. It instead focuses on the more specific problem of ensuring the efficient and equitable recovery of the costs arising from government regulation of estate agents.

Cost recovery as defined in the Department of Treasury and Finance Cost Recovery Guidelines, is:

*"...the recuperation of the costs of services or products that government-provided or funded products, services or activities that, at least in part, provide private benefits to individuals, entities or groups, or reflect the costs their actions impose..."*

*The costs of these activities will need to be recovered in some way – either from users or others who benefit from the good, service or activity; those whose actions give rise to it; or from taxpayers more generally."<sup>14</sup>*

Given that government regulation of estate agents incurs costs, the problem to be addressed by the proposed Regulations is how best to recover the costs of the activities required to be carried out in regulating estate agents. These activities include the processing and review of applications, monitoring and enforcing estate agents' compliance with the law, educating estate agents and providing advice on the regulatory framework. These activities are outlined in section 2.2 of this RIS. The proposed Regulations need to ensure the efficient and equitable recovery of the cost of these activities, and this RIS proposes options for doing this.

An additional consideration, in determining how best to recover the costs of regulating estate agents is ensuring that fees are structured in such a way that those categories of licence applications or transactions that incur more resources to process are charged higher fees. Factors which impact on the resources required to process certain transactions include whether an applicant requires special permission to obtain an estate agents licence (e.g. if they are insolvent or have a disqualifying criminal record), and if the applicant is a corporation and has multiple directors. Applicants with these characteristics require additional checks and more thorough investigations that need to be conducted by more senior staff, which impacts on the costs of the associated transactions.

These additional checks are done because applicants who are insolvent or who have a disqualifying criminal record may be more likely to pose a risk of financial harm arising from improper service or conduct. As such, more time and resources are used to ensure that the applicant is a fit and proper person to hold an estate agent's licence. Furthermore, where a corporation is applying for a licence, the source of risk is not only the operation of the corporation itself but also the behaviour of the individual directors who influence the management of the corporation. Therefore, CAV similarly spends time checking to ensure that each individual director is a fit and proper person to direct a corporation operating as an estate agent.

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<sup>14</sup> Department of Treasury and Finance 2013, *Cost Recovery Guidelines*, page. 5.

## 2.2. Licensing process

The most significant fees charged to estate agents are for new licence applications and annual licence statements.

The new licence application fee seeks to recover the costs incurred in processing the application as well as the information/education, compliance-monitoring and enforcement costs for the first year.

The activities required to process new licence applications are broadly as follows:<sup>15</sup>

- checking the application and following up any discrepancies
- checking the required supporting documents are submitted and completed, and following up any discrepancies
- checking the application fee has been paid
- conducting external background checks (e.g. personal and financial probity checks)
- completing any additional checks for corporation applications (e.g. Australian Securities and Investments Commission checks)
- conducting checks against records maintained by CAV
- processing non-licensed director consent and indemnity forms (corporation applications)
- populating acknowledgement letters indicating missing/incorrect information
- completing follow up work for incomplete applications
- managing delays for supporting documentation
- obtaining approval from management to approve the application, and
- sending the licence certificate.

The fees related to the annual licence statement seek to recover the cost of updating the licence as well as the compliance-monitoring and enforcement costs for the next year. The processing of annual licence statements itself is not substantial. However, the associated fees seek to recover the costs of compliance and enforcement activities in the estate agents sector, which include:

- educating licensees and general assistance with compliance
- monitoring compliance of licensees with the requirements of the Estate Agents Act
- investigating complaints about agents' conduct
- initiating and running disciplinary proceedings, and
- maintaining an up-to-date register of the details of estate agents and agents' representatives.

As such, the majority of the annual licence fee comprises the costs of supporting the effective compliance-monitoring and enforcement of the conduct and practices of estate agents and their agents' representatives.

## 2.3. Government objectives

The primary objective of the proposed Regulations is to recover the costs of efficiently administering the Estate Agents Act to support an effective regulatory scheme.

General government policy is that fees be set on a full cost recovery basis. Nevertheless, there may be situations where recovering less than full costs is desirable. This includes, for example, where:

- it is not feasible to recover full costs due to practical implementation issues
- there are benefits to unrelated third parties, or

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<sup>15</sup> Note that certain activities are only required for applications by corporations.

- equity considerations outweigh the efficiency objectives associated with full cost recovery<sup>16</sup>.

Equity is a particular consideration in the approach to recovering the costs of regulating estate agents, and when balanced against the efficiency objective means that full cost recovery through licensing fees is not considered to be the most appropriate approach for the estate agents scheme (see section 2.4).

In addition to cost recovery, the objective of government is to have an effective regulatory system whereby information held by the regulator, in this case CAV, is up-to-date and accurate, to support compliance-monitoring and enforcement.

## 2.4. Approaches to cost recovery

There are three approaches to recovering the cost of the activities involved in regulating estate agents including charging licensing fees to estate agents, funding from the VPF, or a combination of both of these approaches. A range of factors needs to be considered and assessed against efficiency and equity objectives to determine the appropriate approach for the proposed Regulations.

### ***Funding through licensing and other fees***

Under this approach the regulatory costs would be fully recovered by charging licensing fees to estate agents.

However, as estate agents would pass on the fees to their clients through their service fees, this approach would mean that the consumers of estate agency services would meet the costs of regulation. For example, higher licensing fees would be expected to result in higher service fees to sellers and landlords which, they in turn, would attempt to recoup in full or part through higher sale prices for buyers and rents for tenants, although the cost would be expected to be small given the large number of transactions facilitated by estate agents each year<sup>17</sup>.

Licensing fees have the advantage of being efficient and transparent about the cost of regulation as they also signal to estate agents the significance of holding a licence, in particular, the importance of competently managing the risks of property transactions for consumers.

On the other hand, this approach would not be equitable for the consumers of estate agency services. Because estate agents hold trust moneys on behalf of many of the consumers who use their services, these consumers would meet the cost of regulation both through higher service fees and costs and also through forgone interest on trust moneys.

### ***Funding from the Victorian Property Fund***

Under this approach, the cost of regulating estate agents would be fully met from the VPF with no licensing fees charged to estate agents and other parties.

The VPF is a trust fund established under the Estate Agents Act to compensate individuals and corporations when an estate agent, conveyancer or their respective representatives misuse or misappropriate trust money in the course of their work. Income to the VPF comprises:

- interest earned on deposits held in estate agents' trust accounts
- licence fees paid by estate agents, conveyancers and owners corporations managers

<sup>16</sup> Pages 20-21 of the Cost Recovery Guidelines (2013) provides a more comprehensive list of circumstances in which full cost recovery may not be appropriate.

<sup>17</sup> Based on Valuer-General data for 2015 and the number of bonds lodged and held by the RTBA in 2015-16 there were approximately 7,531,469 transactions handled by estate agents, comprising approximately 171,322 residential, commercial, industrial and rural property sales and 7,360,147 residential tenancies transactions (but not including rural, industrial and commercial leasing transactions). It is expected that estate agents would arrange and charge a fee for a substantial proportion of these transaction.

- fines and penalties paid by estate agents, and
- investment income.

Surplus moneys held in the VPF may be used for a number of purposes specified under the Estate Agents Act including the costs of regulating estate agents.

The rationale for considering funding from the VPF is that consumers are already contributing to the cost of regulating estate agents by forgoing interest earned on moneys held in trust by estate agents on their behalf. The interest earned on moneys paid by buyers and tenants to estate agents and held by them in trust on behalf of sellers and landlords is paid to the VPF instead of being distributed to the parties involved in the transactions.

However, fully funding the cost of regulating estate agents from the VPF is not efficient or equitable. Not all sales and leasing moneys received by estate agents are held in their trust accounts. For example, sales deposits may be transferred to legal practitioners and conveyancers, and the Residential Tenancies Bond Authority (RTBA) holds bonds for residential tenancies. Additionally, even where an estate agent facilitates a residential or commercial sales or leasing transaction, the deposit, security deposit and/or rent may be paid directly to a legal practitioner or conveyancer or held by the parties themselves.

This means that the interest on moneys held in these ways does not flow through to the VPF. Therefore, full recovery of the cost of regulating estate agents from the VPF would not recoup costs from all consumers who deal with estate agents and benefit from their regulation.

It would also mean that other uses of the VPF may be restricted through a reduction in funds being available for other purposes. These include VCAT's costs to resolve residential tenancy disputes and the grants program under section 76 of the Estate Agents Act that provides, among other matters, funding for affordable housing in Victoria. Additionally, the VPF needs to maintain a sizable balance to meet the claims of consumers who suffer monetary loss because of the misuse or misappropriation of trust money by estate agents.

#### ***Funding through fees and a subsidy from the Victorian Property Fund***

This approach to cost recovery involves a combination of licensing fees and a VPF funding. Historically the costs of regulation have been recovered in part through licensing fees charged to estate agents and others transacting with the BLA, and in part through a subsidy from the VPF. This approach minimises the risk of some consumers of estate agency services not meeting the regulatory costs and also the risk of others meeting those costs in multiple ways.

Estate agent fees were last reviewed in 2007. At that time, the decision was made not to charge fees at full cost recovery, with the associated RIS<sup>18</sup> estimating that the preferred option would only recover on average 48 per cent of the costs of regulating estate agents. The remaining costs are met through an average subsidy of 52 per cent from the VPF.

Therefore, the preferred option set out in this RIS proposes cost recovery through a combination of fees and a subsidy from the VPF.

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<sup>18</sup> Consumer Affairs Victoria, *Regulatory Impact Statement for the proposed Estate Agents (Fees) Regulations 2007*, May 2007.

## 3. Options

### 3.1. Proposed changes to fee types

Regardless of which option is implemented, a number of changes to fee types are proposed.

Some fees are no longer applicable and will not be prescribed in the proposed Regulations. These are the:

- fees for an application, annual statement, extension and late lodgement for a rural branch manager's licence – this licence no longer exists so no new applications will be received or other transactions relating to this licence processed
- fee to search or inspect records kept by the Registrar other than those in the public register – no other records are available as all information is contained in the register
- fee for a copy of, or an extract from, the records kept by the Registrar other than those in the public register – for the reason above
- fee to inspect the register – the register is available online and is made freely accessible to the public<sup>19</sup>, and
- fee for a duplicate licence – with the introduction of online transactions in September 2017 estate agents can now download a copy of their licence as required.

It is also proposed to include new fees to take into account the resources involved in processing certain transactions. The proposed new fee types are:

- an application for permission to hold a licence or be employed as an agent's representative by –
  - a person involved in a claim against the VPF
  - a person who is bankrupt
  - a person with a disqualifying criminal record, and
  - 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 a corporation.

The costs of permission applications are currently not recouped through fees<sup>20</sup>. However, they involve processes that take up significant amounts of time given the rigorous background and criminal record checks that must be conducted, and the consideration that must be given to applications to determine whether or not it is contrary to the public interest.

It would be inequitable if fees were not charged, as applicants who require these transactions would not be paying for the regulatory service, while applicants who have not benefited from the service would meet the costs through higher fees for other transactions. Further, imposing a fee indicates to the industry the cost of the necessary resources to process such transactions and ensures that there is not a higher level of demand than appropriate for the service.

While the costs of processing transactions for directors are being fully recouped through the fees charged to corporations, those fees include the average costs of transactions for directors, and corporations with more directors are not meeting the full costs of the regulatory services they require while those with fewer directors

<sup>19</sup> While there are costs to maintaining and providing an online register, it is not intended that a fee be charged to access this due to the benefit of making this information available to the public. Further, the cost of maintaining the register is negligible as it populates automatically as part of the licence application and approval process.

<sup>20</sup> Although fees for permission application were costed in the RIS for the 2007 Regulations they were not prescribed.

are contributing to those regulatory costs.

## 3.2. The costs of regulation

The options below propose fees that have been estimated by considering the:

- direct variable costs – these costs reflect the direct salary costs<sup>21</sup> of processing particular transactions and vary according to the volume of transactions
- fixed direct costs – these costs take into account the direct ongoing costs of each division of CAV in regulating estate agents, including education and online services and compliance-monitoring and enforcement, and
- fixed indirect costs – these costs represent the costs of supporting indirectly the regulation of estate agents such as corporate support services and the director's office.

The total regulatory cost for 2017-18 accounting for the efficiency improvements (as outlined in section 1.6) is estimated to be approximately \$9.97 million comprising:

- \$0.99 million for direct variable costs
- \$7.26 million for fixed direct costs, and
- \$1.72 million for fixed indirect costs.

The fixed costs represent the ongoing costs of regulating estate agents and have been shared across all fee types, except for the fixed direct costs, which have not been applied to fees for services that provide a specific private benefit to individual estate agents, such as those for a late payment, extension of time, and copy of and extract of the register.

Detailed information on how the costs were derived and the assumptions made is set out in Appendix 3.

## 3.3. The options

The base case and four options with different fee structures are presented and discussed:

- **Base case** – no fees are set for estate agents or others
- **Option 1** – full cost recovery through a fee structure that reflects efficiency improvements and the above changes as well as a fee to suspend, cancel or surrender a licence
- **Option 2** – is the same as Option 1 but also includes a new licence fee and annual licence statement fee for each director of a corporation
- **Option 3** – is the same as Option 2 excluding the fee to suspend, cancel or surrender a licence – the cost of these transactions are distributed across the annual licence fees, and
- **Option 4** – is the same as Option 3 adjusted for a funding subsidy from the VPF.

## 3.4. Base case: No fees charged

As the 2007 Regulations are sunsetting, the base case is that the regulations are not remade and no fees are prescribed.

This would mean that the costs incurred by government for the regulation of estate agents would not be recovered, resulting in at least \$9.97 million a year not being recovered. This deficit would need to be met from

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<sup>21</sup> Cost of probity checks such as for bankruptcy and criminal history are also included here, where relevant.

other funding sources, such as the VPF.

General government policy is that regulatory fees and user charges are set on a full cost recovery basis to ensure that both efficiency and equity objectives are met. Full cost recovery represents the value of all the resources used or consumed in the provision of an output or activity.

Full cost recovery is consistent with achieving efficiency and equity objectives because:

- it promotes the efficient allocation of resources by sending the appropriate price signals about the value of all the resources being used in the provision of government goods, services and/or regulatory activity, and
- from a horizontal equity point of view, it ensures that those that benefit from government provided goods and services, or those that give rise to the need for government regulation, pay the associated costs, and those that do not benefit or take part in a regulated activity do not have to bear the costs.

However, some inequity arises under the base case, as not all those who benefit from the regulation of estate agents would bear the costs of that regulation. As outlined in section 2.4, if the regulatory costs are fully met from the VPF, only consumers who have moneys held in trust by estate agents would bear the cost of regulating estate agents through forgone interest on their money. In contrast, the parties to sales and leasing transactions where no moneys are held in trust but who benefit from the regulatory service would not meet any of the costs of regulation.

Price signals would be absent under the base case and this could lead to an inefficient allocation of resources if there is excess demand for a regulatory service. Specifically in the case of estate agents, if no fees were set, the sector would have no price signals indicating the cost (and value) of regulating estate agents or for obtaining an estate agent's licence. This has the potential to result in an inefficient allocation of government resources if there is an excess demand for estate agents' licences and associated regulatory activity.

Furthermore, full or partial cost recovery through fees would alleviate demands on the VPF and enable any excess funds in the VPF to be available for projects that provide broader societal benefit.

### 3.5. Option 1: Full cost recovery through fees with no fees for directors

This option proposes full cost recovery by prescribing the fee types listed in the table below, which include the changes discussed at section 3.1. It also includes a fee for suspending, surrendering or cancelling an estate agent's licence. The fees proposed under Option 1 are set out in Table 4.

**Table 4: Option 1 Fees**

Fee Description	Proposed fees
Estate agent new licence – corporation	\$1,052.95
Estate agent new licence – individual	\$836.71
Estate agent permission – individual – VPF claim	\$1,324.06
Estate agent permission – individual – insolvency	\$1,324.06
Estate agent permission – individual – criminal record	\$1,324.06
Estate agent permission – corporation – disqualifying factors to hold a licence	\$2,105.59
Estate agent annual licence statement – corporation	\$649.19



Fee Description	Proposed fees
Estate agent annual licence statement – individual	\$636.17
Estate agent – extension of time – annual licence	\$124.87
Estate agent – late lodgement – annual licence	\$121.79
Branch manager – annual approval	\$117.34
Branch manager – extension of time – annual approval	\$124.87
Branch manager – late lodgement – annual approval	\$121.79
Copy or extract of register	\$115.00
Register certificate	\$136.60
Surrender, suspension or cancellation of licence	\$174.09

### 3.6. Option 2: Full cost recovery through fees with fees for directors

This option proposes full cost recovery and has the same fee types as Option 1, but also includes prescribing fees for the following types of transactions:

- licence application fee for each director of a corporation
- permission application fee for each director of a corporation with disqualifying factors, and
- annual licence fee for each director of a corporation.

Prescribing a fee for the above applications recognises that processing applications for each director of a corporation incurs additional resources, as separate checks must be conducted for each director. Table 5 lists the fees proposed under this option with the three new fees highlighted.

**Table 5: Option 2 Fees**

Fee Description	Proposed fees
Estate agent new licence – corporation	\$693.24
Estate agent new licence – for each director	\$538.77
Estate agent new licence – individual	\$651.47
Estate agent permission – individual – VPF claim	\$1,138.82
Estate agent permission – individual – insolvency	\$1,138.82
Estate agent permission – individual – criminal record	\$1,128.82
Estate agent permission – corporation – disqualifying factors to hold a licence	\$1,157.57
Estate agent permission – for each director	\$904.18
Estate agent annual licence statement – corporation	\$450.93
Estate agent annual licence statement – for each director	\$438.49
Estate agent annual licence statement – individual	\$450.93
Estate agent – extension of time – annual licence	\$95.82
Estate agent – late lodgement – annual licence	\$92.74
Branch manager – annual approval	\$88.29
Branch manager – extension of time – annual approval	\$95.82
Branch manager – late lodgement – annual approval	\$92.74

Fee Description	Proposed fees
Copy or extract of the register	\$85.94
Register certificate	\$107.55
Surrender, suspension or cancellation of licence	\$145.03

### 3.7. Option 3: Full cost recovery through fees with fees for directors and cross subsidisation

This option proposes full cost recovery with a fee structure that is the same as Option 2 but excludes a fee for suspending, surrendering or cancelling an estate agent's licence. Those costs are cross-subsidised and distributed across the annual licence statements for estate agents.

The suspension of a licence is typically triggered if non-compliance has been found to occur. Suspension is required to ensure an estate agent is no longer licensed to work in real estate in Victoria. Further, in these circumstances, it may be more costly for government to pursue a fee owing to it than the amount of the fee itself. Given a history of non-compliance, it is likely that the fee would not be paid and multiple attempts would be required to receive a response.

Similarly, cancellation of a licence occurs when a licensee has not submitted an annual statement, a business goes into administration or individuals become bankrupt. As with suspension, cancellation of a licence could also be the result of disciplinary action against an estate agent. Charging a fee for cancelling a licence in these circumstances may also be considered inappropriate and ultimately may be more costly than the fee value.

Estate agents may voluntarily surrender their licence if they no longer wish to work in real estate in Victoria. Imposing a fee to surrender a licence may create a disincentive for doing so and, therefore, affect the integrity and reliability of the register of estate agents if there are people on the register who are no longer working as estate agents. The register is used for multiple purposes including by the public to identify estate agents that they may wish to engage and is also used by CAV for the purposes of monitoring compliance. If consumers or CAV contacts an estate agent who continues to be on the register but is no longer working, resources are wasted and confidence in the regulatory system is eroded.

While there would not be a prescribed fee for suspending, surrendering or cancelling a licence under this option, the estimated annual cost of doing so would be spread across annual licence fees. The fees propose under Option 3 are set out in Table 6, which also highlights the fees proposed for directors and to suspend, surrender or cancel a licence. All other fees would be the same as Option 2.

**Table 6: Option 3 Fees**

Fee Description	Proposed fees
Estate agent new licence – corporation	\$693.24
Estate agent new licence – for each director	\$538.77
Estate agent new licence – individual	\$651.47
Estate agent permission – individual – VPF claim	\$1,138.82
Estate agent permission – individual – insolvency	\$1,138.82
Estate agent permission – individual – criminal record	\$1,138.82
Estate agent permission – corporation – disqualifying factors to hold a licence	\$1,157.57
Estate agent permission – for each director	\$904.18

Fee Description	Proposed fees
Estate agent annual licence statement – corporation	\$458.86
Estate agent annual licence statement – for each director	\$438.49
Estate agent annual licence statement – individual	\$458.86
Estate agent – extension of time – annual licence	\$95.82
Estate agent – late lodgement – annual licence	\$92.74
Branch manager – annual approval	\$88.29
Branch manager – extension of time – annual approval	\$95.82
Branch manager – late lodgement – annual approval	\$92.74
Copy or extract of the register	\$85.94
Register certificate	\$107.55
Surrender, suspension or cancellation of licence	\$0

### 3.8. Option 4: Partial cost recovery through fees, remaining costs funded by the Victorian Property Fund

This option proposes cost recovery through fees, supplemented by a subsidy from the VPF. The fee structure would be the same as Option 3 with fees for each director but with no separate fees for the surrender, suspension or cancellation of a licence.

This option recognises, as discussed in section 2.4, that although full cost recovery through licensing fees is efficient because the costs of regulation are transparent to estate agents and consumers of their services, and equitable to the extent that those who benefit bear those costs, it is inequitable for some consumers who would be required to bear more of those costs. These are consumers who are parties to transactions for which estate agents hold trust moneys as they will be contributing to the regulatory costs both through the interest they forgo on those moneys (which is paid to the VPF), and also through the service fees they pay to estate agents (which include the licensing fees passed on by estate agents).

However, there is no readily available data on the proportion and value of transactions for which estate agents hold trust money, making it difficult to determine the appropriate amount of subsidy from the VPF to allocate to different activities. While it is expected that estate agents are involved in the majority of sales, leasing and property management transactions in Victoria, those transactions that estate agents do not hold trust moneys for are likely to be of a high value including commercial and industrial and high end residential property transactions.

The 2007 RIS sets the average subsidy for the current fees at 52 per cent of total costs. However, despite fee indexation through the use of fee units, the subsidy for 2017-18 is estimated to have increased to 52.96 per cent.

In the absence of an alternative measure, the 2007 RIS subsidy is proposed as the basis for the subsidy for the proposed Regulations. Therefore, the proposed subsidy for Option 4 is an average of 51.97 per cent with the subsidy applied to new applications and to annual licence statements for estate agents and branch managers. The proposed subsidy is 43 per cent for new licence applications, 50 per cent for new directors, 55 per cent for annual licence statements and 57 per cent for existing directors.

The fees proposed under Option 4 are set out in Table 7.

**Table 7: Option 4 Fees**

Fee Description	Proposed fees
Estate agent new licence – corporation	\$395.15

<b>Fee Description</b>	<b>Proposed fees</b>
Estate agent new licence – for each director	\$269.39
Estate agent new licence – individual	\$371.34
Estate agent permission – individual – VPF claim	\$1,138.82
Estate agent permission – individual – insolvency	\$1,138.82
Estate agent permission – individual – criminal record	\$1,138.82
Estate agent permission – corporation – disqualifying factors to hold a licence	\$1,157.57
Estate agent permission – for each director	\$904.18
Estate agent annual licence statement – corporation	\$206.49
Estate agent annual licence statement – for each director	\$188.55
Estate agent annual licence statement – individual	\$206.49
Estate agent – extension of time – annual licence	\$95.82
Estate agent – late lodgement – annual licence	\$92.74
Branch manager – annual approval	\$39.73
Branch manager – extension of time – annual approval	\$95.82
Branch manager – late lodgement – annual approval	\$92.74
Copy or extract of the register	\$85.94
Register certificate	\$107.55
Surrender, suspension or cancellation of licence	\$0

Revenue collected from these fees is estimated to be approximately \$4.79 million or 48.03 per cent of the cost of the regulatory scheme of approximately \$9.97 million a year.

## 4. Options Assessment

### 4.1. Multi-criteria analysis

Multi-criteria analysis has been used to assess the different options for fees for estate agents. This approach enables qualitative impacts of the different options to be captured.

The options are assessed against the following three criteria:

- **efficiency** – refers to the extent to which fees reflect the costs of the activities being undertaken, and whether this sends an accurate signal to estate agents about the value of those activities
- **effectiveness** – refers to the extent to which the proposed fees encourage or discourage the sector from complying with the Estate Agents Act, or have other unintended consequences on the sector (e.g. reducing competition or the provision of services in some areas of the state), and
- **equity** – refers to the extent to which the fees recover costs in an equitable way, such that those who incur the cost (i.e. use a particular services), are the ones that pay the requisite fee.

The criteria reflect the desire to address the identified problems and achieve the government objectives of recovering costs and having an effective regulatory system, while ensuring that those who require greater regulatory servicing pay the associated costs.

As the three criteria are considered equally important they are weighted at 33 per cent each.

Each option is then scored against these criteria, on a scale of -10 to +10. The options are scored relative to the base case of no regulations (i.e. no fees), which has a score of '0'.

### 4.2. Assessment of options

#### 4.2.1. Option 1: Full cost recovery through fees with no fees for directors

**Efficiency** – In the base case, although costs would be recovered through the VPF, no fees would be set and so there would be no clear price signal to estate agents that reflected the costs of the regulatory activities. Option 1 is an improvement over this base case because it reflects the estimated costs of those activities (see Appendix 3). These fees are not perfectly cost-reflective, because without a fee for directors the fee charged for corporations does not reflect the additional cost in processing the applications of corporations with multiple directors, and the costs attributed to this function represent a large proportion of all total costs (around 26 per cent). For this reason CAV gives Option 1 a score of +5 for this criterion.

**Effectiveness** – However, in terms of effectiveness this option is considered to be inferior on multiple grounds to the base case and so is scored at -4. While it is transparent about the cost of regulation, the amount of the proposed fees would be a barrier to some estate agents obtaining a licence, thereby potentially decreasing competition in the sector, particularly in regional areas where service penetration is low, or generally increasing the risk of unlicensed trading, which could have a negative impact on competition.

Additionally, under this option, a fee is charged for suspending, surrendering or cancelling a licence. In terms of suspending and cancelling a licence, it is unlikely that an estate agent would pay such a fee. In terms of surrendering a licence, a fee is likely to discourage estate agents from voluntarily notifying CAV that they are no longer working as an estate agent, which would affect the integrity of the licensing system (as discussed in section 3.7).

**Equity** – This option is considered to be an improvement on the base case as all those who use estate agency services, pay for those services. However, some consumers will be paying both through higher services charges where licensing fees are passed on by estate agents, and also through forgone interest payments. Also, the main difference between this option and the other three options is that there would be no fees for directors. This means that the cost of assessing applications that involve corporations with directors would be spread

across the application, annual licence statement and permission fees for corporations. A score of +2 is assigned to reflect the limited improvement over the base case.

Therefore, the total weighted score for Option 1 is +0.99, which is set out in Table 8 along with the scores for each criterion.

**Table 8: Multi criteria assessment of Option 1**

Criteria	Weighting	Score	Weighted Score
Efficiency	33%	+5	+1.65
Effectiveness	33%	-4	-1.32
Equity	33%	+2	+0.66
<b>Total weighted score</b>			<b>+0.99</b>

#### 4.2.2. Option 2: Full cost recovery through fees with fees for directors

**Efficiency** – Option 2 is considered to be an improvement compared to Option 1, as it better reflects the variation in costs involved in processing applications from corporations based on the number of directors. CAV has, therefore, given this option a score of +9. It is not a perfect score because there will still be some variation in costs within any category of fees that is not reflected in the average cost of those activities.

**Effectiveness** – This option is also considered to be similar to Option 1, but as fees are slightly lower (with more costs being recovered through fees for directors) the negative effect on competition and the risk of discouraging estate agents from voluntarily notifying CAV that they are no longer working as estate agents is lower. This option is therefore given a score of -3 to reflect the lower impact expected on competition.

**Equity** – This option is considered to be an improvement over the base case and Option 1. This is because the fee structure recognises that extra resources are used to process corporation applications with directors. If fees were not charged for each director of a corporation, the costs would be shared across all corporate application fees, meaning corporate applications with lower numbers of directors would be subsidising the cost of processing applications by corporations with higher numbers of directors. A score of +4 is assigned to reflect the improvement over the base case and Option 1.

Therefore, the total weighted score for Option 2 is +3.30, which is set out in Table 9 along with the scores for each criterion.

**Table 9: Multi criteria assessment of Option 2**

Criteria	Weighting	Score	Weighted Score
Cost recovery	33%	+9	+2.97
Effectiveness	33%	-3	-0.99
Equity	33%	+4	+1.32
<b>Total weighted score</b>			<b>+3.30</b>

#### 4.2.3. Option 3: Full cost recovery through fees with fees for directors and cross subsidisation

**Efficiency** – Option 3 does not charge a fee for surrendering, suspending or cancelling a licence, which means it

is less reflective of those costs than Option 2. It does charge a fee for processing applications or statements for individual corporation directors, and so is more reflective of those associated activities than Option 1. Given that the costs attributed to surrendering, suspending or cancelling a licence are a very small proportion of total costs (around 2 per cent) and the costs associated with activities relating to directors are a substantial proportion of total costs (around 26 per cent), CAV gives this option a score of +8.5 for this criterion, to reflect that it is only slightly less cost reflective than Option 2, and is still much more cost reflective than Option 1.

**Effectiveness** – This option is considered an improvement on options 1 and 2 as there is no risk of a fee discouraging estate agents from voluntarily notifying CAV that they are no longer working as estate agents, because no fee is charged for surrendering, suspending or cancelling a licence. Compared to the base case, the fees may still present some barrier to entry. For this reason CAV has given this option a score of -2.

**Equity** – This option is considered an improvement over Option 1, as the fees recognise the higher resources involved in processing corporate applications with multiple directors. However, this option is considered to be inferior to Option 2, and so is scored at +3. By not charging a fee for, surrendering, suspending or cancelling a licence those who are incurring resources for the processing of these transactions are not being charged a fee for doing so, and rather, others are subsidising this activity.

Therefore, the total weighted score for Option 3 is +3.14, which is set out in Table 10 along with the scores for each criterion.

**Table 10: Multi criteria assessment of Option 3**

Criteria	Weighting	Score	Weighted Score
Efficiency	33%	+8.5	+2.81
Effectiveness	33%	-2	-0.66
Equity	33%	+3	+0.99
<b>Total weighted score</b>			<b>+3.14</b>

#### 4.2.4. Option 4: Partial cost recovery through fees, remaining costs funded by the Victorian Property Fund

**Efficiency** – Option 4 is essentially the same as Option 3, but with a subsidy from the VPF that is equal to around 40 to 60 per cent of different types of fees. As the average subsidy is roughly 52 per cent, this option is given a score of 4.25 – half the value of the score awarded to Option 3.

**Effectiveness** – Like Option 3, under Option 4 no fee is charged for surrendering, suspending or cancelling a licence, which contributes to the integrity of the licensing scheme. Any negative effect on competition will be lower under this option than Option 3, as the fees are lower. Therefore, this option is given a score of -1 to reflect very small negative impact on effectiveness.

**Equity** – This option is considered to be the best option and is scored at +7 as it 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. However, it does not receive a perfect score because, as with Option 3, by not charging a fee for suspending, surrendering or cancelling a licence, it means that there is some cross subsidisation, with others paying for these activities.

Therefore, the total weighted score for Option 4 is +3.38, which is set out in Table 11 along with the scores for each criterion.

**Table 11: Multi criteria assessment of Option 4**

Criteria	Weighting	Score	Weighted Score
Efficiency	33%	+4.25	+1.40

Criteria	Weighting	Score	Weighted Score
Effectiveness	33%	-1	-0.33
Equity	33%	+7	+2.31
<b>Total weighted score</b>			<b>+3.38</b>

### 4.3. Preferred option

The preferred option is Option 4 as it scored the highest out of all the options against the specified criteria. A comparison of the current fees against the proposed fees under Option 4 is set out in Table 12.

**Table 12: Comparison of the current fees against proposed fees**

Fee Description	Current fees	Proposed fees	Change from current to proposed fees
Estate agent new licence – corporation	\$749.39	\$395.15	Decrease
Estate agent new licence – for each director	-	\$269.39	New fee
Estate agent new licence – individual	\$432.71	\$371.34	Decrease
Estate agent permission – individual – VPF claim	-	\$1,138.82	New fee
Estate agent permission – individual – insolvency	-	\$1,138.82	New fee
Estate agent permission – individual – criminal record	-	\$1,138.82	New fee
Estate agent permission – corporation – disqualifying factors to hold a licence	-	\$1,157.57	New fee
Estate agent permission – for each director	-	\$904.18	New fee
Estate agent annual licence statement – corporation	\$475.94	\$206.49	Decrease
Estate agent annual licence statement – for each director	-	\$188.55	New fee
Estate agent annual licence statement – individual	\$216.29	\$206.49	Decrease
Estate agent – extension of time – annual licence	\$64.56	\$95.82	Increase
Estate agent – late lodgement – annual licence	\$168.79	\$92.74	Decrease
Branch manager – annual approval	\$64.56	\$39.73	Decrease
Branch manager – extension of time – annual approval	\$64.56	\$95.82	Increase
Branch manager – late lodgement – annual approval	\$64.56	\$92.74	Increase
Rural branch manager – new licence	\$10.24	-	No fee
Rural branch manager – annual licence	\$91.72	-	No fee
Rural branch manager – late lodgement – annual licence	\$64.56	-	No fee
Rural branch manager – extension of time – annual licence	\$64.56	-	No fee
Beneficial interest sale	\$173.06	-	No fee



Fee Description	Current fees	Proposed fees	Change from current to proposed fees
Duplicate licence	\$64.56	-	No fee
Search or inspect register	\$64.56	-	No fee
Search for or inspect other record	\$64.56	-	No fee
Copy or extract of register	\$64.56	\$85.94	Increase
Copy or extract of other record	\$64.56	-	No fee
Register certificate	\$64.56	\$107.55	Increase

The proposed fees mean that, for example:

- an individual who applies for an estate agent's licence would pay an application fee of \$371.34 *down* from the current fee of \$432.71
- a corporation with one director that applies for an estate agent's licence would pay an application fee of \$664.54 (\$395.15 for the corporation plus \$269.39 for one director) *down* from the current fee of \$749.39 – 59.9 per cent of corporations have a single director
- a corporation with two directors that applies for an estate agent's licence would pay an application fee of \$933.92 (\$395.15 for the corporation plus \$538.77 for two directors) *up* from the current fee of \$749.39 – 28.5 per cent of corporations have two directors and 11.6 per cent have more than two directors
- a person with a criminal record who applies for permission to obtain an estate agent's licence would pay a fee of \$1,138.82 rather than no fee
- an individual estate agent would pay an annual licence statement fee of \$206.49 *down* from the current fee of \$216.29, and
- a corporate estate agent with one director would pay an annual licence statement fee of \$395.04 (\$206.49 for the corporation plus \$188.55 for one director) *down* from \$475.94, and
- a corporate estate agent with two directors would pay an annual licence statement fee of \$583.59 (\$206.49 for the corporation plus \$377.10 for two directors) *up* from \$475.94.

The proposed fees for Option 4 are converted into fee units and set out in the proposed Regulations in Appendix 4. The 2017-18 value of a fee unit is \$14.22.

Under the preferred option, revenue collected from fees is estimated to be \$4.79 million while fee revenue for 2017-18 estimated to be \$4.69 million. As previously noted, the total cost of regulating estate agents is estimated to be \$9.97 million for 2017-18.

## 5. Small business impact and competition assessments

The preferred option is not expected to impact estate agents, most of who are small businesses, in a significant way.

The licensing fees for estate agents are likely to be either absorbed by the agency business or transferred to consumers of estate agents' services.

However, in comparison to the magnitude of the amounts dealt with in the estate agents industry, the proposed fees are unlikely to represent a significant amount. For example, using the IbisWorld data in section 1.1, average profit for the Victorian estate agency sector in 2016-17 was estimated to be approximately \$311.6 million a year. Therefore, the annual licence statement fee for an estate agency corporation with 12 directors (12 is currently the highest number of directors for an estate agency corporation in Victoria) represents 0.0008 per cent of the estimated profits.

Likewise, if estate agents' fees are passed on to consumers the potential increase in charges to consumers will be negligible, given the volume of transactions handled by an estate agency business.

As government regulation can have a significant impact on the competitiveness of the economy, regulatory proposals are subject to an assessment to ensure that any impacts on competition are justified through the overall benefits to the community.

The proposed Regulations have been assessed as being in line with this requirement, and it has been determined that they will not have a negative impact on competition because they:

- will not affect market structure, including the number and size of estate agency businesses
- will not make it more difficult for agency businesses to operate in the market
- will not distort competition between individual and corporate estate agents - all estate agents will be required to pay a licensing fee, however, corporations will be required to pay a higher fee than individuals given that they are also likely to have greater market power and potentially lower costs per unit (assuming economies of scale)
- will not restrict the ability of estate agency businesses to choose the price, quality, range or location of services they provide
- will not lead to higher ongoing costs for new agency businesses compared to existing agency businesses, and
- will not affect the ability of agency businesses to innovate or develop new services.

Preliminary consultation with stakeholders in 2016 provided support the proposed fee structure, indicating that it appeared fairer and more equitable.

## 6. Consultation and Implementation

The main stakeholders concerned with fees for estate agents are the REIV and the ALPAA.

CAV consulted with the REIV and the ALPAA in 2016 during the development of this RIS and the fees options. CAV will further engage with these stakeholders on the implementation of the proposed Regulations.

As part of implementation, estate agents will be advised of the changes to the fee structure and fees through a number of communication channels including:

- providing relevant information to the REIV and ALPAA and working with them to advise estate agents of the changes to the fees.
- updating the fees page for estate agents on the CAV website
- using social media to refer the public to the relevant page on the CAV website advising of the changes to fees for estate agents
- advising licensed estate agents of the fee changes through the annual statement notice, which is sent to licensed estate agents six weeks before their annual statement is due, and
- distributing eNewsletters and/or email to all licensed estate agents with details of the changes.

## 7. Review and evaluation

The development of an evaluation strategy is required for any new regulatory proposal that imposes a significant social, economic or environmental burden on a sector of the public. This is consistent with the government's commitment to a culture of continuous improvement. Therefore, an evaluation strategy has been prepared to enable CAV to assess the effectiveness of the new fees during the 10-year life of the proposed Regulations.

The evaluation will assess the estimated level of cost recovery against the actual revenue for estate agent and related transactions. The evaluation will enable CAV to assess whether the objectives of the proposed Regulations are being met, or whether there is a need to make amendments to the fee structure to meet the desired outcomes.

It is proposed to conduct a two-stage post-implementation evaluation.

The first stage evaluation will be conducted once the outcomes of the Consumer Property Law Review are finalised and any legislative changes to the Estate Agents Act are passed by Parliament but before those changes come into operation.

The second stage implementation will be conducted during the lead-up to the next remaking of the Regulations to inform the design and setting of the new fees.

### 7.1. First stage evaluation

The first stage evaluation is likely to take place sometime in 2020-21, given the passage through Parliament of any reforms to the Estate Agents Act arising from the Consumer Property Law Review.

Before any changes to the Estate Agents Act come into operation, it is likely that all regulations under the Act will need to be reviewed. Further, by this time, CAV will have the opportunity to determine the realised benefits of the new online licensing system and to understand the impacts of the proposed Regulations through ongoing engagement with key stakeholders.

The objective of the first stage evaluation of the proposed Regulations will be to:

- consider the impact of relevant legislative changes (if any) on the proposed Regulations including any changes in internal procedures that may impact on the resources required to regulate estate agents
- determine whether the fees charged are recovering the intended proportion of the cost of regulation, including confirming the actual time and resources required to complete licensing tasks following experience with the operation of the new online licensing system
- consider the impacts of the proposed new fee structure, and
- assess whether any adjustments are needed to the fee types and fees to ensure that the objectives of the Regulations are continuing to be met.

To this end, a number of approaches will be used by CAV including:

- desktop analysis to determine consistency of the proposed Regulations with any changes to the Estate Agents Act
  - measuring the actual time taken to complete licensing processes, following experience with the operation of the online licensing scheme – this will be done through self-assessment by CAV operational staff
  - assessing the number of real estate and related transactions processed by CAV and the trends in the numbers of those transactions
  - comparing the cost of regulation against the revenue collected from the fees, and
-

- targeted consultation with key stakeholders to determine any unforeseen impact of the proposed Regulations.

Data collected will include transaction processing times, number of transactions, CAV's processing costs and fees revenue collected.

## 7.2. Second stage evaluation

The second stage of the evaluation will commence in 2027 in the lead-up to the sunseting of the Regulations in mid-2028, unless the operation of the Regulations is extended with the approval of the Premier of Victoria, in which case the evaluation will commence one year later.

The objective of the second stage evaluation of the proposed Regulations will be to assess whether:

- the revenue collected from the fees continues to represent an equitable contribution to the cost of regulating estate agents and whether other factors have emerged that affect the funding mix of fees and a subsidy from the VPF
- there are any new or unintended consequences of the Regulations that need to be addressed or corrected in relation to the future design of the new fee structure, and
- the Regulations are otherwise operating efficiently and to receive any general feedback on their impact.

In addition to the approaches proposed to be used to conduct the first stage evaluation, CAV will also collect new data to assist with the assessment of the funding mix, including annual and trend data on:

- the total number and type of real estate transactions undertaken in Victoria
- the type and number of transactions facilitated by estate agents
- the amount and proportion of client moneys held in trust by estate agents
- the length of time client moneys are held in trust by estate agents and to whom those moneys are paid on their release from agents' trust accounts, and
- the interest on moneys held in trust by estate agents and not held in trust by estate agents.

CAV will also consult with the professional bodies representing estate agents, including the REIV and ALPAA, to gather feedback and evidence on the impact of the fee structure on estate agents, in particular on the fee amounts for new applications and annual licence statements.

## Appendix 1 – Current fees for estate agents in Victoria

**Table 13: Current fees for estate agents in Victoria**

Section Reference Estate Agents Act	2007 Regulation Reference	Description	Fee in Fee Units	Fee in 2017- 18 \$
S. 17(1A)	Reg. 6(1)(a)	Fee for a new estate agent's licence where an estate agent is a corporation	52.7	\$749.39
S. 17(1A)	Reg. (6)(1)(b)	Fee for a new estate agent's licence where an estate agent is an individual	30.43	\$432.71
S. 23(1)	Reg. 6(2)(a)	Fee for annual statement where an estate agent is a corporation	33.47	\$475.94
S. 23(1)	Reg. 6(2)(b)	Fee for annual statement where an estate agent is an individual	15.21	\$216.29
S. 24(1)	Reg. 7	Fee for extension of time to pay and lodge an annual statement for an estate agent's licence	4.54	\$64.56
S. 24A(1)	Reg. 8	Fee for late payment and lodgement of annual statement for an estate agent's licence	11.87	\$168.79
S. 30(5)	Reg. 9(a)	Fee for annual approval of a branch manager approval	4.54	\$64.56
S. 30(5)	Reg. 9(b)	Fee for extension of time for application for a branch manager approval	4.54	\$64.56
S. 30(5)	Reg. 9(c)	Fee for late payment or lodgement for application for a branch manager approval	4.54	\$64.56
S. 30AB(3)(b)	Reg. 10(1)	Fee for an application for a rural branch manager's licence	0.72	\$10.24
S. 30AB(4)	Reg. 10(2)(a)	Fee for annual statement for a rural branch manager's licence	6.45	\$91.72
S. 30AB(4)	Reg. 10(2)(b)	Fee for extension of time to pay and lodge an annual statement for a rural branch manager's licence	4.54	\$64.56
S. 30AB(4)	Reg. 10(2)(c)	Fee for late payment or lodgement of annual statement for a rural branch manager's licence	4.54	\$64.56
S. 55(14)	Reg. 11	Fee for an application for permission to make a purchase in accordance with s. 55(14)	12.17	\$173.06
S. 24D	Reg. 12	Fee for duplicate licence	4.54	\$64.56
S. 33(5)	Reg. 13(1)	Fee to inspect the register	4.54	\$64.56
S. 33(5)	Reg. 13(2)	Fee to search or inspect records kept by the Registrar other than the register	4.54	\$64.56
S. 33(5)	Reg. 14(1)	Fee for a copy of, or an extract from, the register	4.54	\$64.56
S. 33(5)	Reg. 14(2)	Fee for a copy of, or an extract from, records kept by the Registrar other than the register	4.54	\$64.56
S. 99	Reg. 15	Fee for the issue of a certificate signed by the Registrar certifying as to any matter relating to the contents of the register	4.54	\$64.56



## Appendix 2 – Fees for estate agents in other jurisdictions

**Table 14: Fees for estate agents in other jurisdictions – 2017-18**

Fee Type	Fees
<b>Australian Capital Territory</b>	
Application for issue of a licence (individual & corporation)	\$792 – 1 year \$2,377 – 3 years
Application for issue of an annual renewal (individual & corporation)	\$792 – 1 year \$2,377 – 3 years
Duplicate licence certificate	\$22
<b>New South Wales</b>	
Application for grant of licence (individual & corporation)	\$520 \$499 – if lodged online
Renewal of licence (individual & corporation)	\$376 \$369 – if lodged online
Replacement of licence	\$46
<b>Northern Territory</b>	
Application for a licence (individual & corporation)	\$711 – 1 year \$1921 – 3 years \$3,202 – 5 years
Application for renewal of a licence (individual & corporation)	\$711 – 1 year \$1921 – 3 years \$3,202 – 5 years
<b>Queensland</b>	
Application for a licence – individual	\$1,377.30 – 1 year \$2,582.30 – 3 years \$39 – criminal history check
Application for a licence – corporation	\$783.30 – 1 year \$1,413.30 – 3 years \$39 per person – criminal history check
Renewal of a licence – individual	\$699.55 – 1 year \$1,941.95 – 3 years \$39 – criminal history check
Renewal of a licence – corporation	\$396.65 – 1 year \$1,032.15 – 3 years \$39 per person – criminal history check
Replacement of licence	\$41.50
<b>South Australia</b>	
Application for a licence – individual	\$631
Application for a licence – corporation	\$807
Renewal of a licence – individual	\$347
Renewal of a licence – corporation	\$523
<b>Tasmania</b>	



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<b>Fee Type</b>	<b>Fees</b>
Examination	\$141
Licence assessment	\$141
Application for registration – individual	\$141
Application for registration – corporation	\$423.20
<b>Western Australia</b>	
Fee for a licence – individual	\$1,003.30 – 3 years
Fee for a licence – partnership or body corporate	\$1,244 – 3 years
Renewal fee	\$644.60
Holding fee	\$234.05
Inspection of register	\$11.25
Duplicate licence	\$28.00
Copy (certified or uncertified) of the complete register	\$115.50

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## Appendix 3 – Estimation of Fees

This appendix sets out the assumptions and information that form the basis for the estimation of fees contained in this RIS.

### A3.1. Data inputs

#### Salaries

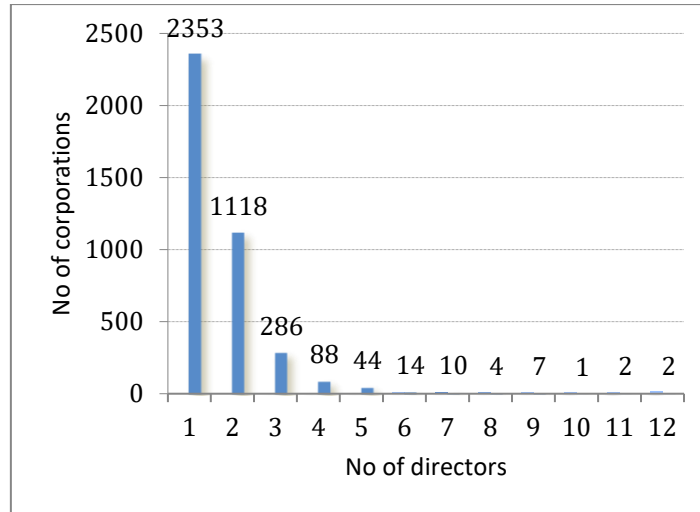
The table below shows the salaries used in the calculation of fees. They were calculated by using the mid-point of Victorian Public Service (VPS) salary ranges for 2017-18 plus on costs, operating costs, and rent and accommodation expenses. These are based on the Department of Justice and Regulation's business case costing guidelines.

**Table 15: VPS salary costs 2017-18**

VPS Grade	Cost Per Hour	Cost Per Minute
VPS – 1	\$52.00	\$0.87
VPS – 2	\$59.23	\$0.99
VPS – 3	\$70.39	\$1.17
VPS – 4	\$80.49	\$1.34
VPS – 5	\$92.51	\$1.54
VPS – 6	\$114.42	\$1.91
VPS – 7	\$149.83	\$2.50
Executive Officer – 3	\$164.72	\$2.75
Executive Officer – 2	\$209.74	\$3.50
Executive Officer – 1	\$282.49	\$4.71
Business Licensing Authority Member	\$164.41	\$2.74

#### Number of directors

**Figure 1: Number of Directors**



The average number of directors for an estate agency corporation is 1.61 directors.

## Number of transactions

As no licence application or annual licence fees have previously been charged for each additional director of a corporation, figures were not captured for transactions of this type. However, based on the data in A3.1.2, the number of transactions for licence applications and annual licence fees for a corporation has been multiplied by 1.61, the average number of directors for all corporations.

**Table 16: Estimated number of transactions for each licence type and related transactions for 2017-18**

Fee Description	Estimated Number of Transactions*
Estate agent new licence – corporation	560
Estate agent new licence – for each director	902
Estate agent new licence – individual	1,096
Estate agent permission – individual – VPF claim	5
Estate agent permission – individual – insolvency	31
Estate agent permission – individual – criminal record	92
Estate agent permission – corporation – disqualifying factors to hold a licence	26
Estate agent permission – for each director	42
Estate agent annual licence statement – corporation	3,307
Estate agent annual licence statement – for each director	5,324
Estate agent annual licence statement – individual	9,103
Estate agent – extension of time – annual licence	4
Estate agent – late lodgement – annual licence	1,451
Branch manager – annual approval	46
Branch manager – extension of time – annual approval	1
Branch manager – late lodgement – annual approval	1
Copy or extract of register	2
Register certificate	9

Fee Description	Estimated Number of Transactions*
Surrender, suspension or cancellation of licence	678
<b>Total no of transactions</b>	<b>22,680**</b>
<b>Total number of transactions related to annual licence fees and approvals</b>	<b>20,488**</b>

\* Rounded numbers

\*\* Total based on unrounded numbers

### A3.2. Variable Direct Costs

The variable direct costs reflect the salary costs incurred in processing transactions related to the regulation of estate agents and the cost of probity checks where relevant. The variable direct costs incorporate the efficiency improvement in transaction processing times.

The average cost of a criminal history check is \$23 for an individual, a credit history is estimated to be \$26.62 for a corporation, and \$7.87 for an individual, and \$13 for a court extract for each criminal conviction for both an individual and a corporation.

The processing times specified for the transactions listed in Table 17 are based on estimates prepared by an independent consultant engaged by CAV in 2014-15. As the estimates predicted the processing times needed to support online licence applications, they were verified and updated, drawing on CAV's processing experience following the introduction of online licensing in September 2017.

The transaction processing costs are considered to represent an efficient use of resources given the approach to estimating and verifying the times required to complete activities, and the experience CAV and the BLA have in processing regulatory transactions for other regulated occupations.

**Table 17: Resources required to process transactions**

Fee Description	Processing Time	Processing Cost
Estate agent new licence – corporation	VPS2 – 131 minutes VPS3 – 60 minutes Plus relevant checks	\$262.84
Estate agent new licence – for each director	VPS2 – 47 minutes VPS3 – 15 minutes Plus relevant checks	\$108.37
Estate agent new licence – individual	VPS2 – 116 minutes VPS3 – 53 minutes Plus relevant checks	\$221.07
Estate agent permission – individual -VPF claim	VPS3 – 556 minutes Plus relevant checks	\$708.42
Estate agent permission – individual – insolvency	VPS3 – 556 minutes Plus relevant checks	\$708.42
Estate agent permission – individual – criminal record	VPS3 – 556 minutes Plus relevant checks	\$708.42
Estate agent permission – corporation – disqualifying factors to hold a licence	VPS3 – 556 minutes Plus relevant checks	\$727.17
Estate agent permission – for each director	VPS3 – 336 minutes Plus relevant checks	\$473.77
Estate agent annual licence statement – corporation	VPS2 – 10 minutes	\$12.22

Fee Description	Processing Time	Processing Cost
	VPS3 – 2 minutes	
Estate agent annual licence statement – for each director	VPS2 – 7 minutes VPS3 – 1 minutes	\$8.08
Estate agent annual licence statement – individual	VPS2 – 10 minutes VPS3 – 2 minutes	\$12.22
Estate agent – extension of time – annual licence	VPS2 – 20 minutes	\$19.74
Estate agent – late lodgement – annual licence	VPS2 – 5 minutes VPS3 – 10 minutes	\$16.67
Branch manager – annual approval	VPS2 – 10 minutes VPS3 – 2 minutes	\$12.22
Branch manager – extension of time – annual approval	VPS2 – 20 minutes	\$19.74
Branch manager – late lodgement - annual approval	VPS2 – 5 minutes VPS3 – 10 minutes	\$16.67
Copy or extract of register	VPS2 – 10 minutes	\$9.87
Register certificate	VPS2 – 20 minutes VPS3 – 10 minutes	\$31.48
Surrender, suspension, cancellation of licence	VPS2 – 14 minutes VPS3 – 47 minutes	\$68.96

Note that significantly higher costs are associated with processing applications for a person involved in a claim against the VPF, a bankrupt person, a person with a disqualifying criminal record and a corporation with disqualifying factors. These costs relate to additional analysis of the application form and thorough background checks by senior staff. Processes that are required for these types of applications include credit history and police checks, requesting and reviewing court documents, and seeking legal counsel and approval.

### A3.3. Fixed Direct Costs

These costs reflect the resources required for the ongoing regulation of estate agents.

For most functions the estimated regulatory cost is the staffing cost for delivering regulatory activities related to estate agents. These costs are based on the number and level of staff and the time taken to complete relevant activities. However, for some functions, for example information and dispute resolution services, policy and legislation services and trader compliance service, the regulatory costs are the proportion of the total costs of those functions that are estimated to be spent on estate agent activities. In both cases the cost estimates are supported by budget allocations.

The fixed direct costs set out in Table 18 are considered to be an efficient use of resources, as they are:

- demand driven – information, advice and dispute resolution services are provided in response to requests from consumers while proactive consumer and industry information campaigns are aimed at changing market behaviour, for example for changes in the law or systemic practice issues
- risk-based and intelligence-led – the ongoing monitoring and analysis of market activity and trends ensures compliance and enforcement activities are targeted to the practices that pose the greatest consumer risks, for example, information provided from auditors' reports of estate agents' trust accounts provides an alert to businesses that may have problematic practices and are thus prioritised for inspections, and
- outcomes focused – compliance and regulatory activities aim to use the most appropriate resources to achieve the best possible outcomes.

In addition, oversight processes are in place to identify further opportunities for future efficiency improvement.

**Table 18: Ongoing costs of regulating estate agents**

Division/Function	Estimated Regulatory Costs 2017-18	Regulatory Activities (Based on 2016-17 activity levels)
Information services – <ul style="list-style-type: none"> <li>▪ Information and dispute resolution services, and</li> <li>▪ Education and online services</li> </ul>	\$1,724,812	<ul style="list-style-type: none"> <li>▪ 13,879 telephone calls answered by the estate agents resolution service.</li> <li>▪ 115 instances of advice provided to resolve disputes.</li> <li>▪ 25 newsfeeds and updates.</li> <li>▪ 49 webpages managed on the CAV website.</li> <li>▪ 20 eNewsletters and estate agent articles.</li> <li>▪ 143 information sessions delivered to estate agents and 40 to property managers.</li> <li>▪ 5 articles prepared for the estate agent industry and industry associations.</li> <li>▪ 31 approved real estate forms and publications maintained.</li> <li>▪ 3 real estate industry information campaigns supported<sup>22</sup>.</li> </ul>
Policy and legislation service	\$768,285	<ul style="list-style-type: none"> <li>▪ Provided policy advice on estate agency issues to the Minister, CAV executive and other divisions, and to other government agencies.</li> <li>▪ Responded to consumer and industry enquiries on the policy and legislation underpinning the regulatory framework.</li> </ul>

<sup>22</sup> Excluding the direct costs of real industry campaigns, which are separately funded from the VPF.

Division/Function	Estimated Regulatory Costs 2017-18	Regulatory Activities (Based on 2016-17 activity levels)
		<ul style="list-style-type: none"> <li>▪ Reviewed current and emerging policy issues.</li> <li>▪ Reviewed legislative requirements and made recommendation as required.</li> <li>▪ Advised on the drafting of legislation and supported the passage of legislation through Cabinet and Parliament.</li> <li>▪ Remade regulations as required.</li> <li>▪ Advised on policy and legislation implementation as required.</li> </ul>
Regulatory services –	\$4,766,484	
<ul style="list-style-type: none"> <li>▪ Regulatory transaction services</li> <li>▪ Trader compliance services</li> <li>▪ Enforcement and legal services</li> <li>▪ Information and analysis services</li> </ul>		<ul style="list-style-type: none"> <li>▪ 1,581 new licences Issued.</li> <li>▪ 13,230 annual statements processed.</li> <li>▪ 638 property management and tenancy inspections of real estate agents.</li> <li>▪ 826 trust account-monitoring inspections of real estate agents.</li> <li>▪ 227 auction and underquoting inspections.</li> <li>▪ 1 seasonal auction monitoring campaign for underquoting, resulting in 39 desktop reviews.</li> <li>▪ 13 enforceable undertakings.</li> <li>▪ 21 court actions.</li> <li>▪ 2,407 audit reports processed.</li> <li>▪ 220 claims for compensation for loss of trust moneys from the VPF processed.</li> </ul>
<b>Total Fixed Direct Costs</b>	<b>\$7,259,581</b>	

Information services provide information to estate agents on the regulatory framework, advising them on the requirements to be licensed and obligations around compliance with legislation. This is done through the provision of online web content, guides and associated material as well as having available staff to answer queries via email or direct calls.

Policy and legislative services provide information on the regulatory framework to internal staff on more complex situations associated with the regulation of estate agents and for the purposes of developing education material for the industry. It also responds to requests from the sector, such as requests from external industry stakeholders to clarify legislation.

Regulatory services support the regulation of estate agents through processing key transactions such as licensing and renewals. It also monitors compliance with the regulatory framework and enforces legislation as appropriate.

These fixed direct costs are shared across all licensing fee types (20,488 transactions (see Table 16)), except fees for branch managers, late payment or lodgement, extension of time, duplicate licence and copy of or extract from the register. That is, the fixed direct costs have only been distributed across fees relating to new licences and annual licence statements for estate agents.

The intention is that new licence and annual licence fees not only capture the cost of processing such transactions (the variable direct costs) but also reflect the annual ongoing cost of regulating estate agents. A simple average has been applied to evenly distribute the fixed direct costs across these transactions resulting in \$510.52 for a transaction for Option 1 and \$354.33 for a transaction for options 2, 3 and 4.

Fixed direct costs have been distributed evenly, as no particular factors have been found to vary the demand on these services. For example, compliance activities are not focussed on particular characteristics of estate agents, rather they may be part of a broader compliance program that may have changing priorities over the life of the regulations and may vary based on geographic location or time of the year.

### A3.4. Fixed Indirect Costs

These costs are indirect to the regulation of estate agents and cover the broader corporate functions of CAV that support its operation and staff. These costs have been shared across all fee types and have been calculated by multiplying the total cost of the particular division/function by estate agent licensees as a proportion of total licensees regulated by CAV.

**Table 18: Fixed indirect costs attributed to the regulation of estate agents**

Division/Function	Estimated Regulatory Costs 2017-18	Regulatory Activities (Based on 2016-17 activity levels)
Corporate Services	\$1,450,634	<ul style="list-style-type: none"> <li>▪ Delivered financial management of the statutory trust fund, the VPF.</li> <li>▪ Approved 6 VPF grant applications.</li> <li>▪ Provided executive support to the Estate Agents Council, which meets 11 times each year.</li> <li>▪ Co-ordinated the development and delivery of CAV's risk management strategy including real estate and related plans.</li> <li>▪ Provided the project management governance framework that supports the Consumer Property Law review.</li> <li>▪ Managed the implementation and ongoing maintenance of a new electronic platform to deliver online real estate transactions.</li> <li>▪ Co-ordinated CAV's response to parliamentary matters on real estate issues including preparation for committee hearings and questions arising from committees and parliament generally.</li> </ul>
Deputy Secretary's and Director's Office	\$274,674	<ul style="list-style-type: none"> <li>▪ Provided strategic direction to CAV's administration of the Estate Agents Act.</li> <li>▪ Provided strategic advice and supported the Minister and the Victorian Government to engage on real estate and related matters.</li> <li>▪ Led CAV's stakeholder partnership strategy delivering regular meeting of the real estate reference panel and the consumer forum, along with ad hoc meetings with stakeholders on real estate matters.</li> <li>▪ Represented CAV in government and industry forums considering real estate matters.</li> </ul>
<b>Total Fixed Direct Costs</b>	<b>\$1,725,307</b>	

The amount of \$1.72 million is estimated to be the resource costs of these functions devoted to estate agency matters, and represents 87 per cent of the operating costs drawn from the VPF.



The operating cost percentage uses data from the CAV 2016-17 annual report on the number of licences and registrations<sup>23</sup>, and was determined by calculating the number of licensed estate agents (13,230) as a proportion of the total number of licensees/registrants for occupations that CAV regulates, where the regulatory services are funded from the VPF, including estate agents, owners corporations managers, conveyancers and retirement villages (15,213).

A simple average has been applied to evenly distribute the fixed indirect costs across all fee transactions resulting in a cost of \$105.12 for Option 1, and \$76.07 for options 2, 3 and 4.

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<sup>23</sup> CAV Annual Report 2106-17, page 12.

## Appendix 4 – Proposed Regulations

STATUTORY RULES 2018

S.R. No. /2018

***Estate Agents Act 1980***

**Estate Agents (Fees) Regulations 2018**

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

MARLENE KAIROUZ

Minister for Consumer Affairs, Gaming and Liquor Regulation

Clerk of the Executive Council

### **1 Objective**

The objective of these Regulations is to prescribe fees for the purposes of the **Estate Agents Act 1980**.

### **2 Authorising provision**

These Regulations are made under section 99 of the Estate Agents Act 1980.

### **3 Commencement**

These Regulations come into operation on 1 July 2018.

### **4 Revocation**

The Estate Agents (Fees) Regulations 2007<sup>1</sup> are revoked.

### **5 Definition**

In these Regulations, the Act means the Estate Agents Act 1980.

### **6 Fees for estate agent's licence**

- (1) For the purpose of section 17(1A) of the Act, the prescribed application fee for a licence is—
  - (a) in the case of an estate agent which is a corporation—
    - (i) 27.79 fee units; and
    - (ii) 18.94 fee units for each director of that corporation; and
  - (b) in the case of an estate agent other than a corporation, 26.11 fee units.
- (2) For the purpose of section 23(1) of the Act, the prescribed annual licence fee is—
  - (a) in the case of an estate agent which is a corporation—

- (i) 14.52 fee units; and
  - (ii) 13.26 fee units for each director of that corporation; and
- (b) in the case of an estate agent other than a corporation, 14.52 fee units.

**7 Application for extension of time fee**

For the purpose of section 24(1) of the Act, the prescribed application fee for an extension of time, or further extension of time, is 6.74 fee units.

**8 Late payment or lodgement fee**

For the purpose of section 24A(1) of the Act, the prescribed late payment or lodgement fee is 6.52 fee units.

**9 Fees applying to a branch manager approval**

For the purpose of section 30(5) of the Act—

- (a) the prescribed annual approval fee is 2.79 fee units; and
- (b) the prescribed application fee for an extension of time, or further extension of time, is 6.74 fee units; and
- (c) the prescribed fee for late payment or lodgement is 6.52 fee units.

**10 Fee applying to a person involved in Fund claim to regain licence etc. in exceptional circumstances**

For the purpose of section 31A(2A)(d) of the Act, the prescribed application fee is 80.09 fee units.

**11 Fee applying to a bankrupt person to be allowed limited right to hold licence etc.**

For the purpose of section 31B(2A)(d) of the Act, the prescribed application fee is 80.09 fee units.

**12 Fee applying to a person with criminal record to be allowed limited right to hold licence etc.**

For the purpose of section 31C(2A)(d) of the Act, the prescribed application fee is 80.09 fee units.

**13 Fees applying to a corporation to be allowed to hold licence despite disqualifying factors**

For the purpose of section 31CA(2)(d) of the Act, the prescribed application fee is—

- (a) 81.40 fee units; and
- (b) 63.58 fee units for each director of that corporation.

**14 Copy of, or extract from, register**

For the purposes of section 33(5) of the Act, the prescribed fee for a copy of, or an extract from, the register is 6.04 fee units.

**15 Registrar's certificate of register contents**

The prescribed fee payable for the issue of a certificate signed by the Registrar certifying as to any matter relating to the contents of the register is 7.56 fee units.

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**ENDNOTES**

**Explanatory Details**

<sup>1</sup> S.R. No. 79/2007. Extended in operation by S.R. No. 70/2017.

