

# TRANSCRIPT

## PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

### Inquiry into the Victorian Government's Response to the COVID-19 Pandemic

Melbourne—Thursday, 14 May 2020

#### Members

Ms Lizzie Blandthorn—Chair

Mr Richard Riordan—Deputy Chair

Mr Sam Hibbins

Mr David Limbrick

Mr Gary Maas

Mr Danny O'Brien

Ms Pauline Richards

Mr Tim Richardson

Ms Ingrid Stitt

Ms Bridget Vallenge



**WITNESS**

Mr Gil King, Chief Executive Officer, Real Estate Institute of Victoria (*via videoconference*).

**The CHAIR:** Welcome, Mr Gil King from the Real Estate Institute of Victoria. Sorry for the delay there. Welcome to the public hearings for the Public Accounts and Estimates Committee Inquiry into the Victorian Government's Response to the COVID-19 Pandemic. The Committee will be reviewing and reporting to the Parliament on the responses taken by the Victorian Government, including, as part of the national cabinet, to manage the COVID-19 pandemic and any other matter related to the COVID-19 pandemic.

All mobile telephones should be turned to silent. All evidence taken by this Committee is protected by parliamentary privilege; therefore you are protected against any action for what you say here today, but if you repeat the same things outside this forum, including on social media, those comments may not be protected by this privilege. You will be provided with a proof version of the transcript for you to check. Verified transcripts, presentations and handouts will be placed on the Committee's website as soon as possible. The hearings may be rebroadcast in compliance with standing order 234. We ask that photographers and camerapersons follow the established media guidelines and the instructions of the Secretariat.

We will invite you to make a brief opening statement of 5 minutes. We will cut you off at the 5-minute mark—apologies for any awkwardness there. We ask that you state your name, position and the organisation you represent for broadcasting purposes, and this will be followed by questions from the Committee Members relative to their representation at our Committee table today. Thank you, and we will invite you to make a statement.

**Mr KING:** Thank you, Chair. My name is Gil King. I am the Chief Executive Officer of the Real Estate Institute of Victoria. Thank you for the opportunity to speak on behalf of the members of the REIV. I would like to congratulate the Government on the manner in which it has responded to the COVID-19 crisis and note the wideranging cooperative approach from all sides of governments to the issues at hand.

The real estate profession is as equally grounded in the people business as it is in the property sale and property management business. Our members engage face to face with the public daily, and they do so in a very personal way, whether that be through sales, leasing or management of properties. In the property management space they service both landlords and tenants, a fact that is often disregarded. Property transactions are pivotal to the State's revenue through property taxes. More importantly, they provide the people of Victoria with the United Nations basic human right to adequate housing. They also support the ongoing economic activity and growth of the state through the provision of places of business and workplace environments.

The imposed restrictions, which now have been partially lifted, impacted significantly on property transactions, and this was evidenced through the recent sharp reduction in auction numbers. Restrictions that inhibit property transactions have a huge impact on the state's economy. The effect on property transactions left many Victorians wondering what the impact would be on their own property values as well as their ability to move premises. The property market—those sales and leasing—is not one that can be held back. To attempt to do so would be akin to corking a volcano or quelling a tsunami. By their very nature, property transactions are like the Penrose stairs: there is always one more step to take in the perpetual motion of people moving addresses.

I am proud of the way of our members accepted the circumstances and quickly adapted to the new operating environment through the use of technology, with a strong focus on health, safety and responsibility. They have deservedly been rewarded by the relaxation of some of the restrictions on their activities. All has not been smooth sailing, however, and one of the first issues identified was the lack of certainty in the time between the Prime Minister's first declaration of a moratorium on evictions and the relative certainty provided by the State Government on what that actually meant. An unfortunate by-product of the declaration of a moratorium was the advent of organised residential rent-strike activities and the more informal reluctance by some tenants to pay all or some of their rent, whether that be for a residential or commercial property. These ill-advised activities by a minority exacerbated the financial impact on landlords and estate agents. This made it more problematic to differentiate between those actions and the claims of genuinely impacted tenants who were also suffering sudden and devastating losses of personal and business income because of the State-imposed restrictions on businesses and movement.

The state of uncertainty between the pronouncement and the black and white law has manifested itself understandably and unavoidably across most, if not all, public announcements. For example, despite the COVID-19 temporary measure amendments to the *Residential Tenancies Act* coming into effect on Anzac Day, the underpinning regulations were only issued on Tuesday of this week—a lag of 18 days. This is not said as a criticism but as an observation, and I can attest to the fact that I was involved in many constructive consultations with government officials during that lag period.

I do not wish to appear quixotic in expressing the anticipation and expectation of my members. However, as much as they were asking questions of the REIV, they too are being bombarded with questions by their clients—questions they could not or were not prepared to definitively answer in the absence of the written rules. The biggest issue for our members was the Easter Thursday-night advice that private inspections could not take place on occupied properties. Over the Easter weekend I had numerous constructive conversations directly with the Minister for Consumer Affairs, Gaming and Liquor Regulation. I praise the supporting nature of the Minister's engagement, which resulted in the go-ahead for those inspections being given on Easter Monday. I point out, however, that this outcome was reached through a compromise on the interpretation of the wording of the applicable directions rather than the need for one single word to be changed—an illustration of the ambiguity of the directions. On behalf of our members, I agreed to limitations over and above the written rules in order to facilitate the opening of the private inspection doors.

In conclusion, I am still puzzled by the focus on restrictions on residential auctions and inspections while no restrictions have ever been applied to the conduct of non-residential auctions and inspections other than the social distancing rules. Thank you.

**The CHAIR:** Thank you very much for that introduction. I will pass to Ingrid Stitt, MP, for the first run of questions.

**Ms STITT:** Good morning, Mr King, and thank you for appearing before the Committee this morning. In your introduction you have given us a bit of a flavour for some of the challenges that the real estate industry has been facing as a result of the pandemic—probably a situation that nobody could have foreseen—and of course dealing with some of these complex problems you have outlined already. Are there any other major issues that you wanted to highlight to the Committee in terms of the impact of the pandemic on your sector?

**Mr KING:** There are probably two that I could say up front. One I briefly mentioned, which was the significant reduction in the number of auctions that have occurred. That has been quite a transition for us. We were moving into very much an upward swing. I suppose we are somewhat fortunate—if it is appropriate to use the word fortunate during these times; I am not sure it is—but the timing of the restrictions seemed to span over the Easter weekend and the Anzac weekend. They are naturally very low times for auction activity and sales activity, so in some respects the impact has been softened somewhat. We are very pleased that the auction capabilities are now open again, so that is one positive.

One issue of concern for us has been that we became aware early on that Victoria Police had taken a decision to not execute warrants of possession issued prior to the pandemic becoming known. They were issued but they were not being executed. They did that, as we are told by the Chief Commissioner's office, on the grounds of safety of their members. We understand now under the new legislation in relation to the *Residential Tenancies Act* that there are grounds for eviction still, and as such we are concerned that if the police do not activate those warrants, they are basically null and voiding the decisions of VCAT.

**Ms STITT:** Thank you, Mr King. On 11 May the Government did announce some easing on restrictions, which is going to mean that open inspections and auctions will be able to proceed, albeit in restricted numbers because of social distancing requirements. What impact do you anticipate these revised restrictions will have on the sector?

**Mr KING:** I think it will kickstart some recovery, no doubt. Certainly we are very pleased at the relaxation of those restrictions, and we look forward to future relaxed restrictions if we can demonstrate, as I am sure we will, that we can act responsibly.

**Ms STITT:** Okay. In your opening statement, Mr King, you did touch on the *Residential Tenancies Act* deferral. The COVID-19 omnibus act obviously dealt with these matters and a range of residential tenancy

amendments, including the deferral from 1 July 2020 to 1 January 2021. Can you give us a sense of how this deferral is going to help the real estate industry in direct relation to the COVID-19 impact?

**Mr KING:** Certainly. If we imagine a world without COVID-19 and we are operating normally, we still had concerns at the turnaround from the release of the proposed regulations at around about this time, giving us about a six to seven-week period to train our people in the new activities under the *Residential Tenancies Act* that were to come in on 1 July. So we knew the date it was commencing, but we were very concerned about the short turnaround time from having known of the regulations and commencement. This now gives us an opportunity to further educate our members. We still have not seen the details around the full regulations for the *Residential Tenancies Act* in line with the amendments to the *Residential Tenancies Act* without the COVID-19 impact. What we would like to see in this environment would be a statement along the lines of not that 1 January is the latest date—that is how it is written at the moment—but that it is the actual date. We understand that that is not how the legislation is written; it is the latest date it can commence. So we are concerned somewhat that if COVID-19 has a better outcome than expected and we move to a more normal state, the Government could commence it sometime earlier and we would have a very short turnaround time to prepare our members.

**Ms STITT:** Mr King, the Government is obviously very mindful of the impact of COVID-19 and the pandemic on commercial tenancy arrangements and commercial landlords, who are obviously experiencing the knock-on effect of the cash flow problems that their tenants are experiencing. Can you give us a bit of an insight into some of the issues that are being faced by commercial landlords and tenants at the moment in your sector?

**Mr KING:** Yes, they have experienced, as has the residential sector, a significant impact on their businesses. So the agents are dealing with landlords who vary greatly in their capacity to weather the storm, so to speak. Many commercial property owners really rely very heavily upon the income of the business to maintain themselves, and if that business is shut down, as many businesses have shut down, then that basically means they are getting no income. Obviously with the JobKeeper allowance and through the commercial code, that is somewhat of a relief, but it is not assisting in every circumstance, and there will be some businesses that simply are not operating, and they are having to negotiate in very difficult circumstances the new rent that is to be paid.

**Ms STITT:** Mr King, part of the commercial lease reform package that the Victorian Government has released includes a free mediation service through the Victorian Small Business Commission to assist landlords and tenants. Could you give us a bit of an insight into how that process is going and the experience of your members so far?

**Mr KING:** I understand it is fairly early days for that, and in the early days it is always a bit difficult to gauge the efficacy of the negotiation and mediation process. I have not heard any horror stories as yet, but as I said, it is early days, and I think I could equally say the same thing in the residential space, that it is early days. We are concerned that if the volume increases substantially, the resources will need to be there in order to deal with those cases.

**Ms STITT:** There have been some media reports and I think some ABS stats that tenants and landlords are actually coming to their own private arrangements in the current climate. Are you able to comment about your experience with that so far with REIV members?

**Mr KING:** Yes. Well, they were doing this before the Government intervention, so to speak, through the code of conduct. They were always trying to negotiate the best outcome, and that is part of their day-to-day business. They would do that in any environment, particularly in the commercial space, where there was a difficulty with the payment of rent. We have seen that sector struggle over the past few years in terms of in particular retail, and our members are quite vigilant and diligent in embarking on negotiations to resolve the issue between the parties. They do that whether it is in this situation—obviously just the volume now has increased, and I suppose the urgency and the magnitude of the loss of income is so much more than previously.

**Ms STITT:** And in respect to residential leases, has that been the experience so far as well or a little less so?

**Mr KING:** Again, very early days. The regulations, as I said, were only released earlier this week. I have been speaking with Consumer Affairs Victoria as recently as this morning. They anticipate that they will be able to cope and have matters move through to the mediation service. I believe there are 60 cases currently

sitting in there and they are getting on and doing those now that the regulations have been released. They have I think five teams set up to run that, so we are getting that feedback quite regularly and I am meeting regularly to get that feedback. We are experiencing a high degree, but some of the difficulty is caused by the confusion around what is actually a requirement for rent relief. Even the 30 per cent of the income being spent on rent is a figure, but it is a bit fluid and there are some vagaries around that.

**Ms STITT:** Okay. And has the REIV membership benefited from the payroll tax concessions provided as part of the Government's business survival package?

**Mr KING:** Yes, we are hearing they are. They are receiving some benefit from that. Also some have obviously the JobKeeper allowance coming through as well, but that is not across the board.

**Ms STITT:** Okay. I am wondering whether you have seen or whether you have got any insight so far in relation to how regional and metropolitan areas might be playing out slightly differently. I am mindful of the fact that we had the bushfire crisis in regional Victoria and then very soon after the pandemic hitting. Can you give us any insights on whether or not you are seeing any differences in relation to regional and metropolitan outcomes for tenants and landlords?

**Mr KING:** Yes. The vacancy rates for properties, both metropolitan and regional, have increased slightly, and we believe that is because some of the short-term accommodation properties have been released back onto the market as long-term leases simply because of the restrictions in the directions. I have heard anecdotally that there are a lot of inquiries in regional Victoria, probably more than normal, and that may be a consequence of people looking for opportunities to either relocate or to make an investment when they likely see the market is in a bit of a lull. Regional Victoria—it is difficult to just think about it as one homogenous group, because it really does depend on which part of Victoria you are from. If you are down the Barwon area or if you are up in the north-west or in Gippsland, it is a different feel. If you are in a small country town or whether you are in a more rural city, then it does vary as well. We are hearing of significant issues across the board, but in some isolated pockets we are hearing that the market has just stopped.

**Ms STITT:** Thank you, Mr King. I do not have any further questions, Chair.

**Mr LIMBRICK:** Thank you, Mr King, for your appearance today. One of the issues that I believe we are seeing is lots of renegotiation of rent, both in commercial and residential tenancies. How do you see that playing out as it affects the gross yield of properties? Is this a long-term thing, or are these negotiations for short-term type arrangements—and if they are not, how do you think that will feed into property prices over the longer term?

**Mr KING:** They are for short-term periods only, and sometimes there might be two negotiations during the COVID-19 period in relation to an outcome for the rent relief—and obviously circumstances can change. If there is a relaxation three months down the track or halfway through the six-month period, then some businesses may be able to operate again, and their income may increase and they may have more capacity to pay. What we are seeing is that there are a vast amount of inquiries being made, and not all of those inquiries are being translated into mediated outcomes or even negotiated outcomes. So I have to say that the agents are experiencing a great deal of work and the property managers are experiencing a great deal of work in determining the genuine cases and the not-so-genuine cases. There has been some pushback, as we have seen, from the requests for some of the financial advice that has been requested, and there is some reluctance from tenants to hand that over. But it is vital for them to be able to ascertain the veracity of the claim that is being made, and so it is important they see that documentation.

In terms of long-term impact, there are certain circumstances where there were built-in rent increases during this six-month period. They have been stalled, and they will be taken up I imagine at the end of the COVID-19 period, whenever that may be—obviously with the caution that they cannot take advantage of that opportunity to make the rent increase.

**Mr LIMBRICK:** Thank you, Mr King. If these contracts are renegotiated for short-term arrangements, what are the types of triggers that are setting the contract back to normality? So this would be in commercial tenancies mostly I am referring to. So what are the trigger points that would say, 'Okay, this period is over, and we're going back to the normal arrangements pre-COVID'?

**Mr KING:** Well, I think it would be back to more business as usual, and if businesses can get back to usual and their capacity is returned, then they will be in a better place. That will not play across the board evenly though, because some businesses will return to operations but they will be at a limited capacity for a period of time and it may take some time to recover. So again, the negotiation period is probably going to extend beyond any government-mandated period, just as it probably did before the COVID-19 intervention.

**Mr LIMBRICK:** One other issue you alluded to in your presentation: I had someone contact my office and they are a landlord. They have got three commercial properties. They are a self-funded retiree. They were retail tenancies. They proactively renegotiated a rent which was like a 40 per cent reduction or something along those lines—a very significant reduction in rent—until the business could get back on its feet and back into operation. But then after the announcement about the ban on evictions, the tenant came back to them and said, ‘We’re not paying rent anymore’. Is this something that you have seen happen a bit? It is like a perverse consequence.

**Mr KING:** Yes, I did allude to this. This is the problem. The announcement of the no-eviction six-month period was somewhat troubling because it gave some people the view that no matter what they did they could not be evicted. In the residential space that has now proven to be not correct, and I would argue it is not correct in the commercial space either. So it is important. There are three sides to the argument. One is that the tenant is suffering distress. If they are not paying their rent, then the landlord is suffering distress. And if the landlord is not receiving their rent, then the commercial property manager, who is probably relying upon a good part of their income from the commission from the rent, is not receiving the rent either. So it really does require all parties to understand the impacts on each of the other parties and negotiate in good faith to support each other rather than looking at their own personal circumstances.

**Mr LIMBRICK:** And just finally: is there some effect on your industry that the Government may have overlooked that this Committee should be looking at—some consequence that you think the Government might have missed?

**Mr KING:** That is a good one. I think the mixture in the announcement of changes of putting the operational, the procedural and the financial together in one basket has not been helpful in that. If I can give an example in the residential space, the procedures are laid out and the entry through the process is through Consumer Affairs Victoria. The actual mediation process is conducted through the DHHS, and there is also VCAT. Like many industries of this nature—like construction and like property—there are many areas that regulate the professions, and some ability to be consistent across that and have one consistent message is not there. If I give this example: I asked the question the other day at a meeting whether the \$2000 grant was applicable to a particular issue relating to a rent negotiation in residential space. The answer was not able to be given because it was not being handled by the people I was talking to. It had to be referred to the DHHS, so I had to actually speak to two parties to try and get the answer. Again that lack of communication: it is getting better, but in the early days it was quite difficult.

**The CHAIR:** Thank you; I will stop you there. The Member’s time has expired.

**Mr D O’BRIEN:** Good morning, Mr King. Just going back to the issue of the residential leases regulations, which, as you said, I think was 18 days between the Bill and the actual regs being released this week. How has that actually impacted your members? Could you maybe just go into a bit more detail on how much difficulty that has caused?

**Mr KING:** Sure. We are in the situation where we knew what the legislation said but there were some gaps, and one of those gaps was there were tenants wishing to leave their properties under a periodic lease and there was a drafting error that had to be rectified in the regulations. That was done, and that was very gratefully achieved. But the lack of certainty around this means that when we are being asked questions and we are being asked to provide answers to our members, we actually cannot do that because what we are doing is we are doing our best-guess scenario to provide that information to the members. It has been exacerbated a little bit by the fact that the CAV telephones have been off, with many of them working from home, and the public has had to do written inquiries into Consumer Affairs. Again that is now being relaxed. We are seeing a far better environment now, but it has just been a great period of uncertainty when we are being asked a specific question—for example, if a rent increase was notified in February to take effect in April, does it still take effect? We now know the answer is no, but we had no clarity up until that point.

**Mr D O'BRIEN:** I can say as local MPs, we can sympathise. We were getting the same sort of questions on a whole range of things, not just real estate. You mentioned this morning that in a discussion with CAV—they have got five teams working on mediation, I think is what you said. I do not know how big the teams are, whether they are two or three people or 200 or 300 people, but is that enough—five teams?

**Mr KING:** For the numbers they have currently got I think it is, and whilst they are waiting for the regulations I understand that they have been doing a lot of the background work. That is what has been communicated to us today, so again I think the proof will be in the pudding for us to see what the outcomes are and report back on. We always get varied reports about the efficacy of these systems. I had some experience in the domestic building dispute system and the warning always was there would not be enough resources to handle it, and this is going to be the most important issue: the resources available to handle the case loads.

**Mr D O'BRIEN:** So can I interpret then that CAV needs to be prepared to up the resources if need be, if there is a big drain on the system?

**Mr KING:** Yes. They direct those inquiries through to the dispute resolution service, and CAV need to have that but also the dispute resolution service needs to have that resource.

**Mr D O'BRIEN:** Just on that delay and the release of the regs, could you quantify it? Did that have a financial cost and a jobs cost for your members or was it just a frustration?

**Mr KING:** I think anything that causes frustration ultimately ends up in a loss of revenue and income because what it does is actually creates a barrier—a greater barrier, in this difficult time—between the tenant and the landlord. If no-one is getting clear answers, then people get agitated and they are less willing to negotiate. So once it is clear, negotiations can often start off in a far more heated environment than was necessary. So what you may see, because of the 18-day lag, is that more matters end up in the dispute space than would probably have occurred if it had have been closer to.

**Mr D O'BRIEN:** Just on that, I understand that Victoria Police has stated that they will not be enforcing eviction warrants, even those issued prior to 29 March, when the omnibus Bill came in. Is that still the case, as far as you are aware, and how does that impact your industry and its members?

**Mr KING:** Well, the case that I initially referred to the chief commissioner's office and the Minister's office was one which was issued prior to COVID-19 to be executed, and I understand now that they still cannot execute it under the regulations. I suppose my concern is now that if warrants of possession are issued now under the new legislation, under the COVID-19 legislation, they are able to be enforced and people removed—and there are only some very serious grounds. That is obviously violence, domestic violence, damage to property, criminal activity on the property, danger to people and neighbours, the property is not habitable to occupy or the wilful non-payment of rent, such as a rent strike—someone who can pay just refusing to pay. These are very serious matters, and if VCAT see them as serious and issue a warrant of possession, then those warrants need to be able to be executed and executed quickly and effectively. I have not got an answer back. I made that inquiry two days ago and have not yet had a response.

**Mr D O'BRIEN:** An inquiry with, sorry, who? With police or with CAV?

**Mr KING:** With the Minister for Police and also with the chief commissioner's office.

**Mr D O'BRIEN:** Okay, thank you. You mentioned the Easter Thursday debacle, whereby inspections were effectively banned and then rectified, as you said, through a fair bit of work by yourself, and I know our shadow Minister and many others got involved in it. How much impact did that have on the market and on your members at the time and going forward?

**Mr KING:** I have used the phrase a lot and I was going to put it in my opening speech, then I took it out. It was, 'Good Friday, but it certainly wasn't a good Friday at all'. There was no Easter I think for me, the Minister and a number of our members, who were really concerned. We were getting inquiries significantly. I think again it is a bit fortunate that it was the Easter weekend, as I have mentioned, given that there was very little activity over that weekend and we had returned to normal, but I still understand there were some activities cancelled on Easter Saturday that were due to go ahead but were stopped all of a sudden. I suppose our

members—it was more about their level of anxiety, and the relief that they experienced on Monday was palpable.

**Mr D O'BRIEN:** Do you have any suggestions as to how those sorts of mistakes and also even the uncertainty over the residential leases regulations and the like could be addressed going forward if this were to happen again?

**Mr KING:** Well, this was a matter of interpretation. Again, I empathise with anyone writing directions of this nature for the whole state and having it applied to an individual industry—it is very difficult to do so. However, as I said in my opening statement, this was merely a matter of interpretation, and we never interpreted it the way that we were advised it was to be interpreted. We could see no reason why those matters could not continue on, and continue on as they had done prior to Easter. Fortunately, common sense ruled the day and it was resolved, but it was a horrid time for our organisation and for our members in particular, who could see the complete shutting down. How you stop this interpretation I do not know, because it just takes one wrongly spoken word or interpretation and you can devastate an entire activity or profession.

**The CHAIR:** Thank you, Mr King, very much, and thank you for appearing before our Committee today. The Committee will follow up on any questions which were taken on notice in writing, and require responses within five days. Thank you. We will declare this witness concluded and move to our next witness. Thank you for your time.

**Mr KING:** Thank you.

**Witness withdrew.**