

DEPARTMENT OF JUSTICE

SPEECH NOTES

Property Agents and Land Transactions Amendment Bill 2009

Mr Speaker, I move that the *Property Agents and Land Transactions Amendment Bill 2009* be read a second time.

The *Property Agents and Land Transactions Act 2005* and the *Property Agents and Land Transactions Regulations 2006* came into force on 1 December 2006.

The Act was drafted in response to a review, commencing in 1999, recommending that much of the existing regulation could no longer be justified, in terms of National Competition Policy.

The Act repealed the existing *Auctioneers and Real Estate Agents Act 1991* and replaced it with new provisions to regulate the auctioneers and real estate industry.

The Act has resulted in significant de-regulation of the industry, by retaining the licensing of real estate agents who are subject to competency based qualifications. Employees, are subject to a negative licensing regime.

Part 10 of the Act, which is not yet proclaimed, requires vendors to disclose certain information before selling land and cooling-off periods for sale contracts.

Following the passage of the Act in 2005, a number of issues were identified in relation to Part 10, specifically concerning the vendor disclosure provisions.

These issues were viewed as sufficiently problematic to prevent successful operation of the Part. As a result, it was necessary to amend Part 10 before commencement.

The principal amendments are as follows.

Currently, Part 10 provides that a vendor must provide a disclosure statement for the sale of both residential and commercial property. The benefits of the disclosure regime arise primarily for the sale of 'residential' property. There is limited benefit for commercial sales, where purchasers make different inquiries and engage professionals to evaluate a range of matters, prior to the sale.

The application of vendor disclosure requirements to commercial sales provides little value and is viewed as an unnecessary and unwarranted burden on business. The Amendment Bill ensures that Part 10 applies only to sales of residential property.

Legal advice indicates that Part 10, as drafted, applies to residential leases and agreements. It was likely that every time a property owner rented out their property they would be required to provide a vendor disclosure statement for sale of land. Clearly, this was not what was intended.

Part 10 currently provides that the same vendor disclosure statement must be provided for sales of land by all vendors including trustees, mortgagees and legal guardians.

Trustees, mortgagees and legal guardians frequently do not have personal knowledge of aspects of the property and are unable to comply with the existing vendor disclosure requirements. A modified disclosure regime is therefore necessary for the specific circumstances of these particular vendors.

Currently, Part 10 requires that a certificate of title be provided as one of the prescribed disclosure documents. However, in many cases involving sales 'off-the-plan', a certificate of title cannot be provided at the time of advertising or promoting the sale. It was therefore necessary to amend the Act to provide for a modified disclosure regime for sales of property 'off-the-plan'.

The Bill amends the Property Agents and Land Transactions Act to:

- limit the application of Part 10 to residential sales;
- remove the application of the Part to residential leases;
- make provision for sales of land 'off-the-plan'; and
- make a number of miscellaneous amendments.

A number of other miscellaneous amendments are required to ensure the effective operation of the Act. The consultation process highlighted a number of definitional problems within the Act. Some amendment of the Act is also necessary to ensure that property agents and auctioneers can operate more effectively.

The amendments ensure that the Part operates as intended.

The Real Estate Institute of Tasmania and Property Agents Board have provided considerable constructive input to Bill's development.

The amendments to the Act will not result in any diminution of existing consumer protections.

Mr Speaker, the Part 10 vendor disclosure regime will provide significant consumer benefits for purchasers of residential property in Tasmania, particularly as:

- disclosure is required 'pre-sale' - at the point of advertising the residential property – rather than 'pre-contract'; and
- the processes and vendor disclosure statement will be easy to use and understand.

The disclosure processes will also have minimal impact upon the real estate industry, with documents being readily available.

I anticipate that Part 10 will be proclaimed in the first half of 2010, in consultation with industry stakeholders.

Mr Speaker, I commend the *Property Agents and Land Transactions Amendment Bill 2009* to the House.