

TASMANIA

PROPERTY AGENTS AND LAND TRANSACTIONS AMENDMENT BILL 2019

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**PROPERTY AGENTS AND LAND TRANSACTIONS
AMENDMENT BILL 2019**

*(Brought in by the Minister for Building and Construction, the
Honourable Elise Nicole Archer)*

A BILL FOR

**An Act to amend the *Property Agents and Land
Transactions Act 2016***

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Property Agents
and Land Transactions Amendment Act 2019*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

3. Principal Act

In this Act, the *Property Agents and Land
Transactions Act 2016** is referred to as the
Principal Act.

*No. 58 of 2016

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4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting “business that includes carrying out” from the definition of *property management business* and substituting “the carrying out of”;
- (b) by omitting “business that includes carrying out” from the definition of *real estate agency business* and substituting “the carrying out of”.

5. Section 20 amended (Conditions of licence)

Section 20(3) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) a condition requiring the licensee to notify the Board, in an approved form, of any change in the licensee’s name, business address or contact details as soon as practicable after that change;

6. Section 25 amended (Qualifications for real estate agent licence)

Section 25 of the Principal Act is amended as follows:

- (a) by omitting subparagraph (i) from paragraph (b) and substituting the following subparagraph:

- (i) has the qualifications required to be held by the person that are specified in a determination made and in force under section 28A(1)(a); and
- (b) by omitting from paragraph (d)(iii) “of real estate agency business” and substituting “as a real estate agent”.

7. Section 26 amended (Qualifications for property manager licence)

Section 26 of the Principal Act is amended as follows:

- (a) by omitting subparagraph (i) from paragraph (b) and substituting the following subparagraph:
 - (i) has the qualifications required to be held by the person that are specified in a determination made and in force under section 28A(1)(b); and
- (b) by omitting from paragraph (d)(iii) “of property management business” and substituting “as a property manager”.

8. Section 27 amended (Qualifications for general auctioneer licence)

Section 27 of the Principal Act is amended as follows:

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- (a) by omitting subparagraph (i) from paragraph (b) and substituting the following subparagraph:
 - (i) has the qualifications required to be held by the person that are specified in a determination made and in force under section 28A(1)(c); or
- (b) by omitting from paragraph (d)(iii) “of general auctioneering business” and substituting “as a general auctioneer”.

9. Section 28 amended (Qualifications for property representative licence)

Section 28 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) has the qualifications required to be held by the person that are specified in a determination made and in force under section 28A(1)(d); or

10. Section 28A inserted

After section 28 of the Principal Act, the following section is inserted in Division 3:

28A. Board may make determinations on qualifications

- (1) The Board may make a determination specifying the qualifications, including

national qualifications, that the Board considers are required to be held by a person in order for the person to be granted a –

- (a) real estate agent licence; or
 - (b) property manager licence; or
 - (c) general auctioneer licence; or
 - (d) property representative licence.
- (2) The Board may vary or revoke a determination made under subsection (1).
- (3) The Board is to ensure that a determination made under subsection (1), or a variation or a revocation of the determination –
- (a) is published in a manner that the Board thinks fit before the determination or variation comes into effect or the revocation takes effect; and
 - (b) specifies the period for which the determination or variation is in effect or the time when the revocation takes effect; and
 - (c) remains published while the determination or variation remains in effect; and

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(d) is made available for inspection by members of the public and property agents –

(i) at the public office of the Board; and

(ii) on the website of the Board.

11. Section 29 amended (Board to maintain Register)

Section 29(3) of the Principal Act is amended as follows:

(a) by inserting in paragraph (a) “business” after “name and”;

(b) by inserting in paragraph (b) “business” after “name and”;

(c) by inserting in paragraph (c) “business” after “name and”;

(d) by inserting in paragraph (d) “business” after “and”.

12. Section 30 amended (Part 1 of Register)

Section 30 of the Principal Act is amended as follows:

(a) by inserting in subsection (1)(a) “business” after “name and”;

(b) by inserting in subsection (1)(b) “business” after “names and”;

- (c) by inserting in subsection (2) “business” after “and”.

13. Section 31 amended (Part 2 of Register)

Section 31 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “business” after “name and”;
- (b) by inserting in subsection (1)(b) “business” after “names and”;
- (c) by inserting in subsection (2) “business” after “and”.

14. Section 32 amended (Part 3 of Register)

Section 32 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “business” after “name and”;
- (b) by inserting in subsection (1)(b) “business” after “names and”;
- (c) by inserting in subsection (2) “business” after “and”.

15. Section 33 amended (Part 4 of Register)

Section 33 of the Principal Act is amended by inserting “business” after “names and”.

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16. Section 36 amended (Management of real estate agency business)

Section 36(1)(b) of the Principal Act is amended by inserting “a natural person who is” after “managed by”.

17. Section 37 amended (Management of property management business)

Section 37(1)(b) of the Principal Act is amended by inserting “a natural person who is” after “managed by”.

18. Section 38 amended (Employment of property representatives)

Section 38 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(2A) For the avoidance of doubt, nothing in subsection (1) or (2) prevents –

- (a) a real estate agent named in Part 1(2) of the Register from being employed or contracted, in the capacity of a real estate agent, by a real estate agent named in Part 1(1) of the Register; or
- (b) a property manager named in Part 2(2) of the Register from being employed or contracted, in the capacity of a property manager,

by a property manager named in Part 2(1) of the Register.

19. Section 56 amended (False or misleading advertising, &c., by property agents)

Section 56 of the Principal Act is amended as follows:

- (a) by renumbering the text of the section as subsection (1);
- (b) by omitting “the agent knows”;
- (c) by inserting the following subsection after subsection (1):
 - (2) It is a defence for a person charged with an offence against subsection (1) for the person to prove that, at the time when the representation was made, he or she believed, on reasonable grounds –
 - (a) in the case of an offence of false representation, that the representation was true; or
 - (b) in the case of an offence of misleading representation, that the representation was not misleading.

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20. Section 60 amended (Management of general auctioneering business)

Section 60(1)(b) of the Principal Act is amended by inserting “a natural person who is” after “managed by”.

21. Section 65 amended (False advertising, &c., by general auctioneers)

Section 65 of the Principal Act is amended as follows:

- (a) by renumbering the text of the section as subsection (1);
- (b) by omitting “the auctioneer knows”;
- (c) by inserting the following subsection after subsection (1):

(2) It is a defence for a person charged with an offence against subsection (1) for the person to prove that, at the time when the representation was made, he or she believed, on reasonable grounds –

- (a) in the case of an offence of false representation, that the representation was true; or
- (b) in the case of an offence of misleading representation, that the

representation was not misleading.

22. Section 84 amended (Code of Conduct to be developed by Board)

Section 84 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

- (5) The Board is to cause the Code and every revised edition of it to be –
 - (a) made available for inspection by members of the public and property agents –
 - (i) at the public office of the Board; and
 - (ii) on the website of the Board; and
 - (b) emailed to each property agent’s email address.

23. Section 168 amended (Service of documents)

Section 168 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (a) in subsection (1):
 - (ab) emailing it to the property agent’s email address; or

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(b) by inserting the following paragraph after paragraph (a) in subsection (2):

(ab) emailing it to the property agent's email address; or

24. Section 172 amended (Savings and transitional provisions)

Section 172 of the Principal Act is amended as follows:

(a) by omitting subparagraph (i) from subsection (3)(e);

(b) by omitting from subsection (9)(a) “or an assistant property manager”.

25. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.