

FACT SHEET

Property Agents and Land Transactions Amendment Bill 2019

Definitions - Functions of real estate agents and property managers

The amendment clarifies that a person must not carry on all or any part of real estate agency business or property manager business, unless they hold an appropriate licence and are listed in the Register of Property Agents maintained by the Property Agents Board.

Clarification that real estate agents and property managers are able to contract services

The Act currently allows property representatives to contract their services to a real estate or property management business.

Section 38(2A) has been inserted to clarify that real estate agents and property managers can also contract their services to a real estate or property management business.

For example, an independent operator who holds a real estate agent licence may choose to contract their services to a real estate agency business, and then invoice for their time.

Educational qualifications

The Property Agents Board has identified a number of new training courses that should be prescribed under the Tasmanian educational qualifications.

Rather than listing these in the Regulations, as is currently required under the Head of Power in the Act, an amendment gives the Board, as Regulator, the power to issue Determinations which detail the required educational qualifications for licence holders.

This approach is used in the *Occupational Licensing Act 2005*, and provides the flexibility to respond to changing national training packages.

Published Registers – Privacy

There is a minor clarification of section 29 that the address to be published on the Register is the business address of the real estate agency business the licence holder is employed by or has contracted services to, rather than the licensee's personal address.

Management of Businesses

In order to be able to identify responsibility for management of a real estate agency business, an individual needs to be named as the person responsible for the management of that business. The responsible person must be a licensed person in order for the Board to have jurisdiction.

This is achieved by inserting the words "a natural person" into the relevant sections in the Act.

False or misleading advertising by property agents

The requirement that the agent or general auctioneer knows that a representation is false or misleading (sections 56 and 65) provides too high a level of protection to the property agent. From a compliance perspective, there are difficulties in ascertaining definitively whether someone knows a representation is false or misleading, as opposed to applying a reasonableness test in the circumstances.

Therefore the word 'knows' has been removed from the requirement that a property manager or general auctioneer must not make false or misleading representations.

To address any concerns of procedural unfairness, an agent can use as a defence circumstances where he or she has reasonably relied on information supplied by third parties.

Code of Conduct

Section 84 of the Act requires that a printed copy of the Code of Conduct must be issued to each property agent whenever the Code is revised.

A minor amendment to section 84 allows the Board to distribute the Code in other ways, such as via the website or provided to the property agent electronically, rather than requiring the Board to print and issue each property agent a printed copy. This will reduce the administrative and cost burdens currently placed on the Board.

Change of licensee details

Licensees are required to notify the Board of changes to their name and/or contact details. This will allow the Board to ensure that the required Registers reflect the most accurate and up-to-date information available to consumers.

Service of documents

Section 168 provides that any documents to be served under the Act must be provided to the property agent personally, or by registered post.

An additional clause has been inserted to allow email /electronic delivery as an acceptable means of servicing documents.

The change also brings the provision into line with similar requirements in other legislation.