

TASMANIA

CONVEYANCING AMENDMENT BILL (No. 2) 2012

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CONVEYANCING AMENDMENT BILL (No. 2) 2012

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
23 August 2012

(Brought in by the Minister for Corrections and Consumer Protection, the Honourable Nicholas James McKim)

A BILL FOR

An Act to amend the *Conveyancing Act 2004*

Be it enacted by His 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 *Conveyancing Amendment Act (No. 2) 2012*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Conveyancing Act 2004** is referred to as the Principal Act.

*No. 22 of 2004

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4. Sections 15A and 15B inserted

After section 15 of the Principal Act, the following sections are inserted in Division 3:

15A. Prohibition on advertising while licence suspended

- (1) A person whose licence is suspended under this Act (the *suspended licensee*) must not, during the period of the suspension –
- (a) advertise or in any way represent to the public, either expressly or by implication, that he or she is a licensed conveyancer; or
 - (b) cause or allow another person to advertise, or in any way represent to the public, either expressly or by implication, that the suspended licensee is a licensed conveyancer.

Penalty: Fine not exceeding 100 penalty units.

- (2) A person who employs a person whose licence is suspended under this Act must not, during the period of the employee's suspension –
- (a) advertise or in any way represent to the public; or

- (b) cause or allow another person to advertise or in any way represent to the public –

either expressly or by implication, that the employee is a licensed conveyancer.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
 - (b) an individual, a fine not exceeding 50 penalty units.
- (3) It is a defence in proceedings for an offence under subsection (2) if the defendant establishes that, at the time the advertisement was published or the representation was made, the defendant did not know that the employee's licence was suspended.

15B. Certain undertakings to be enforceable

- (1) In this section –

affected person, in relation to an undertaking, means –

- (a) the person to whom the undertaking was given; and
- (b) if the person to whom the undertaking was given

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was acting as the agent of
a principal, the principal;

undertaking means a promise or
guarantee, given by a
conveyancer in the course of
carrying on business as a
conveyancer, that an act will be
done, or will not be done, by the
conveyancer or another person.

- (2) An affected person in relation to an undertaking given by a conveyancer may, if the undertaking has not been carried out, apply to the Supreme Court or the Magistrates Court (Civil Division) for an order or orders to be made under subsection (3) in relation to the undertaking.
- (3) A court to which an application is made under subsection (2) in relation to an undertaking given by a conveyancer may, if it is satisfied that the undertaking has not been carried out, make one or more of the following orders in relation to the application:
 - (a) if the undertaking consists of a promise or guarantee by the conveyancer to do an act or to refrain from doing the act, an order that the conveyancer do the act or refrain from doing the act;

- (b) such orders as the court thinks fit requiring the conveyancer to do an act, or refrain from doing an act, so as to place an affected person as near as practicable in the position that the affected person would have been in if the undertaking had been carried out;
- (c) such orders as the court thinks fit, requiring the conveyancer to pay to an affected person, or to a client of the conveyancer, who has suffered, or is likely to suffer, loss because the undertaking has not been carried out, compensation for the loss.

5. Section 46A inserted

After section 46 of the Principal Act, the following section is inserted in Part 5:

46A. Offences by bodies corporate

If a body corporate commits an offence against this Act, each person concerned in the management of the body corporate is taken to have also committed the offence and may be convicted of the offence unless the person establishes that –

- (a) the act or omission constituting the offence took place without the

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person's knowledge or consent;
or

- (b) the person used all due diligence to prevent that act or omission by the body corporate.

6. Repeal

This Act is repealed on the ninetieth day from the day on which it commences.