

TASMANIA

**PROPERTY AGENTS AND LAND TRANSACTIONS
BILL 2005**

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**PROPERTY AGENTS AND LAND TRANSACTIONS
BILL 2005**

*(Brought in by the Minister for Justice and Industrial
Relations, the Honourable Judith Louise Jackson)*

A BILL FOR

**An Act to regulate certain auction and real estate practices,
to regulate property agents, to provide for the disclosure of
information by vendors of land and for cooling-off periods
for vendors and purchasers in respect of residential
property and to repeal the *Auctioneers and Real Estate
Agents Act 1991***

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Property Agents
and Land Transactions Act 2005*.

2. Commencement

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

3. Interpretation

(1) In this Act, unless the contrary intention appears –

“accountant” means a person practising as a public accountant who is a member of –

- (a) the Australian Society of Certified Practising Accountants; or
- (b) the Institute of Chartered Accountants in Australia; or
- (c) the National Institute of Accountants in Australia;

“approved institution” means an authorised deposit-taking institution mentioned in section 161(2);

“assistant property manager” means a person who has the qualifications required by the regulations to be employed by a property manager named in Part 2(1) of the Register –

- (a) to negotiate the leasing or letting of property; and
- (b) to collect rents for property that is leased or let; and
- (c) to manage property that is leased or let –

but does not include a person who has been suspended or disqualified by the

Board from being employed as an assistant property manager;

“auditor” means a person who –

- (a) is a member of the Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants in Australia or the National Institute of Accountants in Australia; and
- (b) meets the requirements of one of those bodies to practise as a public accountant;

“authorised place of business”, in respect of a real estate agent named in Part 1(1) of the Register, a property manager named in Part 2(1) of the Register or a general auctioneer named in Part 3 of the Register, means a place shown in the Register as a place where the agent, manager or auctioneer may carry on, respectively, real estate agency business, property management business or general auctioneering business;

“Board” means the Property Agents Board established under section 69;

“business”, in respect of the sale or purchase of a business, includes a share in a business and the goodwill of a business, but does not include a share in the capital of a company;

“Code of Conduct” or **“Code”** means the Code of Conduct referred to in section 81;

“company” means a body corporate wherever incorporated;

“conveyancer” has the same meaning as in the *Conveyancing Act 2004*;

“document” means any record of information, and includes –

- (a) anything on which there is writing; and
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph –

and a reference in this Act to a document (as so defined) includes a reference to –

- (e) any part of the document; and
- (f) any copy, reproduction or duplicate of the document or of any part of the document; and

(g) any part of such a copy, reproduction or duplicate;

“functions” includes powers and duties;

“general auctioneer” means a person named in Part 3 of the Register;

“general auctioneering business” means business as an auctioneer where the property auctioned does not include land;

“Guarantee Fund” or **“Fund”** means the fund as continued in existence by section 163(1) under the name Property Agents Guarantee Fund;

“magistrate” means a magistrate within the meaning of the *Magistrates Court Act 1987*;

“name”, in respect of a real estate agent named in Part 1(1) of the Register, a property manager named in Part 2(1) of the Register or a general auctioneer named in Part 3 of the Register, means the name shown in the Register as a name by which the agent, manager or auctioneer may carry on, respectively, real estate agency business, property management business or general auctioneering business;

“owner”, in respect of property, means the person who holds the legal title to it, that person’s successors and assigns and an agent of that person;

“property” includes both real and personal property and any estate or interest in any property real or personal;

“property agent” means a real estate agent, a property manager, a general auctioneer, an assistant property manager or a property consultant;

“property agents industry” means the business carried on by property agents;

“property consultant” means a person who has the qualifications required by the regulations to be employed by a real estate agent to induce or attempt to induce, or negotiate with a view to inducing, people to do all or any of the following:

- (a) acquire or dispose of property or a business;
- (b) make an offer to acquire or dispose of property;
- (c) make an offer to acquire or dispose of a business;
- (d) enter into a contract for the acquisition or disposal of property;
- (e) enter into a contract for the acquisition or disposal of a business –

but does not include a person who has been suspended or disqualified by the

Board from being employed as a property consultant;

“property management business” means business that includes carrying out all or any of the following activities pursuant to instructions received from other people:

- (a) negotiating the leasing or letting of property;
- (b) collecting rents for property that is leased or let;
- (c) managing property that is leased or let;

“property manager” or **“manager”** means a person named in Part 2 of the Register;

“public auction” means an auction that has been publicly advertised;

“real estate agency business” means business that includes carrying out all or any of the following activities pursuant to instructions received from other people:

- (a) selling, buying, exchanging, leasing or otherwise dealing with, or disposing of, property or businesses;
- (b) negotiating the sale, purchase, exchange, lease or any other dealing with, or the disposition of, property or businesses;
- (c) collecting rents for property that is leased or let;

(d) managing property that is leased or let;

“real estate agent” or **“agent”** means a person named in Part 1 of the Register;

“Register” means the Register of Property Agents maintained by the Board under section 56;

“regulations” means the regulations made and in force under this Act;

“relative”, in relation to a person, includes partner, within the meaning of the *Relationships Act 2003*, of that person;

“repealed Act” means the *Auctioneers and Real Estate Agents Act 1991*;

“sale” means a disposition of property for valuable consideration;

“scheme of arrangement” means a scheme of arrangement mentioned in section 161;

“Tribunal” means a Tribunal established in accordance with Division 4 of Part 6;

“Trust” means the trust as continued in existence by section 149(1) under the name Property Agents Trust;

“trust account” has the meaning assigned to that expression by section 145;

“trust money” has the meaning assigned to that expression by section 143.

(2) In this Act –

- (a) a reference to Part 1(1) of the Register is a reference to Division (1) of Part 1 of the Register; and
- (b) a reference to Part 2(1) of the Register is a reference to Division (1) of Part 2 of the Register.

4. Application of Act

- (1) This Act, except Part 10, does not bind the Crown.
- (2) Nothing in this Act prohibits a person mentioned in subsection (3) from carrying out an activity that is part of real estate agency business or property management business.
- (3) Those persons are –
 - (a) a liquidator or receiver; or
 - (b) a person who is subject to a guardianship order under the *Guardianship and Administration Act 1995* or a continuing care order under section 28 of the *Mental Health Act 1996*; or
 - (c) a trustee company within the meaning of the *Trustee Companies Act 1953*; or
 - (d) a legal practitioner in respect of whom a practising certificate is in force under section 51 of the *Legal Profession Act 1993* –
exercising functions in that capacity.

s. 4

No. *Property Agents and Land Transactions* 2005

- (4) An accountant need not be registered to carry out an activity that is part of real estate agency business if the activity does not include the sale, management, letting or lease of land.

PART 2 – REAL ESTATE AGENTS AND PROPERTY MANAGERS

Division 1 – Limits on right to carry on real estate agency business or property management business

5. Real estate agency business to be carried on by real estate agent

A person must not carry on all or any part of real estate agency business, or hold himself or herself out as prepared to do so, unless the name of the person appears in Part 1(1) of the Register.

Penalty: Fine not exceeding 1 000 penalty units.

6. Property management business to be carried on by property manager

A person must not carry on all or any part of property management business, or hold himself or herself out as prepared to do so, unless the name of the person appears in Part 2(1) of the Register or the person is a real estate agent named in Part 1(1) of the Register.

Penalty: Fine not exceeding 1 000 penalty units.

7. Management of real estate agency business

- (1) A real estate agent named in Part 1(1) of the Register must not carry on real estate agency business except at an authorised place of

business that is managed by the real estate agent or by a real estate agent named in Part 1(2) of the Register employed by the agent.

Penalty: Fine not exceeding 50 penalty units.

- (2) A real estate agent must not manage a place where real estate agency business is carried on unless it is an authorised place of business for that business.

Penalty: Fine not exceeding 50 penalty units.

- (3) For the purpose of subsection (1), an authorised place of business where real estate agency business is carried on is being managed by a real estate agent if the agent, although not necessarily in full-time attendance at the place of business, is aware of, and has responsibility for, the day-to-day activities carried on there.

- (4) Despite subsection (1), if for any reason an authorised place of business of a real estate agent cannot be managed by the real estate agent or by a real estate agent employed by the agent, the Board may, if it is satisfied that there are good reasons for doing so, permit the premises to be managed, for such period as the Board is to specify, by a property consultant employed by the agent.

8. Management of property management business

- (1) A property manager named in Part 2(1) of the Register must not carry on property management business except at an authorised place of business that is managed by the property

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

Penalty: Fine not exceeding 50 penalty units.

- (2) A property manager named in Part 2(2) of the Register must not manage a place where property management business is carried on unless it is an authorised place of business for that business.

Penalty: Fine not exceeding 50 penalty units.

- (3) For the purpose of subsection (1), an authorised place of business where property management business is carried on is being managed by a property manager if the manager, although not necessarily in full-time attendance at the place of business, is aware of, and has responsibility for, the day-to-day activities carried on there.
- (4) Despite subsection (1), if for any reason an authorised place of business of a property manager cannot be managed by the property manager or by a property manager employed by the manager, the Board may, if it is satisfied that there are good reasons for doing so, permit the premises to be managed, for such period as the Board is to specify, by an assistant property manager employed by the manager.

9. Employment of property managers and assistant property managers

- (1) A property manager named in Part 2(1) of the Register must not employ a person to carry out the functions of a property manager unless the person's name appears in Part 2 of the Register

or the person is an assistant property manager and is not suspended or disqualified by the Board from being employed by a property manager to carry out those functions.

Penalty: Fine not exceeding 500 penalty units.

- (2) A person must not, by any means, hold himself or herself out as being a property manager or an assistant property manager employed by a property manager named in Part 2(1) of the Register unless the person is a property manager or an assistant property manager employed by the property manager.

Penalty: Fine not exceeding 500 penalty units.

10. Employment of property consultants by real estate agents

- (1) A real estate agent named in Part 1(1) of the Register must not employ a person to carry out the functions of a property consultant on behalf of the agent unless the person has the qualifications required by or under this Act to be a property consultant and is not suspended or disqualified by the Board from being employed by a real estate agent to carry out those functions.

Penalty: Fine not exceeding 500 penalty units.

- (2) A person must not, by any means, carry out, or hold himself or herself out as qualified or prepared to carry out, any of the functions of a property consultant unless the person –

- (a) has the qualifications required by or under this Act to be a property consultant; and
- (b) is acting as a property consultant for a real estate agent by whom the person is employed.

Penalty: Fine not exceeding 500 penalty units.

- (3) A person must not, by any means, hold himself or herself out as being a property consultant employed by a real estate agent unless the person is a property consultant employed by the agent.

Penalty: Fine not exceeding 500 penalty units.

11. Limitations on employees of real estate agents

- (1) This section applies to –
 - (a) a real estate agent who is employed by another real estate agent to manage a branch of that agent's real estate agency business; and
 - (b) a property manager or an assistant property manager employed by a real estate agent in the agent's real estate agency business; and
 - (c) a property consultant employed by a real estate agent in the agent's real estate agency business.
- (2) A person to whom this section applies must not accept employment by more than one real estate agent or property manager at any one time.

Penalty: Fine not exceeding 50 penalty units.

- (3) A real estate agent must not employ a person to whom this section applies if the person is, to the knowledge of the agent, also employed at the same time by another real estate agent or by a property manager.

Penalty: Fine not exceeding 50 penalty units.

12. Limitations on employees of property managers

- (1) This section applies to a property manager or an assistant property manager employed by a property manager named in Part 2(1) of the Register.

- (2) A person to whom this section applies must not accept employment by more than one real estate agent or property manager at any one time.

Penalty: Fine not exceeding 50 penalty units.

- (3) A property manager must not employ a person to whom this section applies if the person is, to the knowledge of the manager, also employed at the same time by another property manager or by a real estate agent.

Penalty: Fine not exceeding 50 penalty units.

13. Real estate agent to keep record of certain employees

- (1) This section applies to a real estate agent named in Part 1(1) of the Register.

(2) Where the agent employs a person –

- (a) to manage an authorised place of business where the agent carries on real estate agency business; or
- (b) to carry out any of the property management functions of that business; or
- (c) to carry out any of the property consultant functions of that business –

the agent must enter details of the person in a register kept by the agent for the purpose.

Penalty: Fine not exceeding 50 penalty units.

(3) The details to be entered in the register are –

- (a) the name and address of the person employed; and
- (b) the capacity in which the person is employed; and
- (c) the date on which the person commenced employment with the agent; and
- (d) in the case of a person employed as a property consultant, his or her relevant qualifications.

(4) If the agent ceases to employ a person whose details are entered in the register, the agent must –

- (a) record when the person ceased to be employed by the agent; and

- (b) if requested to do so by the Board, provide the Board with written details of the reason why the person ceased to be employed by the agent.

Penalty: Fine not exceeding 50 penalty units.

- (5) The agent must include in the register the date when the register was started and the date of each entry in it.

Penalty: Fine not exceeding 50 penalty units.

- (6) The agent must make the register available to the Board at any time upon request.

Penalty: Fine not exceeding 50 penalty units.

14. Property manager to keep record of certain employees

- (1) This section applies to a property manager named in Part 2(1) of the Register.
- (2) Where the property manager employs a person, including another property manager or an assistant property manager –
 - (a) to manage an authorised place of business where the manager carries on property management business; or
 - (b) to carry out any of the property management functions of that business –

the manager must enter the name and address of the person in a register kept by the manager for the purpose.

Penalty: Fine not exceeding 50 penalty units.

- (3) If the property manager ceases to employ a person named in the register, the manager must –
- (a) record when the person ceased to be employed by the manager; and
 - (b) if requested to do so by the Board, provide the Board with written details of the reason why the person ceased to be employed by the manager.

Penalty: Fine not exceeding 50 penalty units.

- (4) The property manager must include in the register the date when the register was started and the date of each entry in it.

Penalty: Fine not exceeding 50 penalty units.

- (5) The property manager must make the register available to the Board at any time upon request.

Penalty: Fine not exceeding 50 penalty units.

15. Limitation on employment of certain people by real estate agents

- (1) Except with the consent of the Board, a real estate agent named in Part 1(1) of the Register must not engage in any capacity a person who is disqualified or suspended by the Board from being employed by such a real estate agent.

Penalty: Fine not exceeding 500 penalty units.

- (2) The Board is to keep a register of people to whom subsection (1) applies and is to make it

available to real estate agents mentioned in that subsection.

16. Limitation on employment of certain people by property managers

- (1) Except with the consent of the Board, a property manager named in Part 2(1) of the Register must not engage in any capacity a person who is disqualified or suspended by the Board from being employed by such a property manager.

Penalty: Fine not exceeding 500 penalty units.

- (2) The Board is to keep a register of people to whom subsection (1) applies and is to make it available to property managers mentioned in that subsection.

17. Limitation on employment of certain people by general auctioneers

- (1) Except with the consent of the Board, a general auctioneer named in Part 3 of the Register must not engage in any capacity a person who is disqualified or suspended by the Board from being employed by such an auctioneer.

Penalty: Fine not exceeding 500 penalty units.

- (2) The Board is to keep a register of people to whom subsection (1) applies and is to make it available to general auctioneers mentioned in that subsection.

Division 2 – Remuneration of real estate agents and property managers

18. Appointment of real estate agents to be in writing

- (1) Except by leave of a court, a real estate agent named in Part 1(1) of the Register is not entitled to sue for, recover or retain any valuable consideration for services provided to a person by the agent in the capacity of a real estate agent unless the agent has a valid written appointment to act for the person in that capacity signed by the person or by a person authorised to sign on his or her behalf.
- (2) An appointment is not valid for the purposes of subsection (1) unless it is contained in a document that –
 - (a) generally sets out the services to be rendered by the agent; and
 - (b) if a specific property is the subject of those services, clearly identifies the property; and
 - (c) clearly indicates how any valuable consideration that the agent may receive is to be calculated; and
 - (d) clearly indicates the nature and extent of the expenses that the agent may incur on behalf of the client, and how those expenses are to be recouped; and
 - (e) clearly sets out how either party to the agreement may terminate the appointment and any conditions subject to which it may be terminated.

- (3) An appointment by a person of a real estate agent named in Part 1(1) of the Register is not a valid appointment for the purposes of subsection (1) unless the person obtaining the signature to the appointment gives a copy of it to the signatory as soon as practicable after it is signed.
- (4) The onus of proof that subsection (3) was complied with is on the person who obtained the signature.
- (5) A real estate agent must not –
 - (a) demand any valuable consideration in contravention of subsection (1); or
 - (b) demand any valuable consideration from a purchaser of any land at a public auction conducted by the real estate agent.

Penalty: Fine not exceeding 50 penalty units.

- (6) Any valuable consideration received by a real estate agent in contravention of subsection (1) or (5) is recoverable as a debt by the person from whom the real estate agent received it.
- (7) Insofar as a written appointment mentioned in subsection (1) –
 - (a) is not an agency agreement; and
 - (b) contains no period for its termination agreed by the parties to the agreement –

it may be terminated by either party giving to the other 30 days' written notice of termination.

- (8) Insofar as a written appointment mentioned in subsection (1) is an agency agreement, it is not valid for a period exceeding 90 days.
- (9) However, subsection (8) does not apply if the agent is engaged by a property developer, being a person who is developing property whether by way of construction or alteration solely with a view to sale.
- (10) In this section –
- “agency agreement”** means an agreement, between a real estate agent and the owner of property or a business, under which the real estate agent agrees, as agent for the owner, to induce or attempt to induce, or negotiate with a view to inducing, people to do all or any of the following:
- (a) acquire the property or business;
 - (b) make an offer to acquire the property or business;
 - (c) enter into a contract to acquire the property or business.

19. Appointment of property managers to be in writing

- (1) Except by leave of a court, a property manager named in Part 2(1) of the Register is not entitled to sue for, recover or retain any valuable consideration for services provided to a person by the manager in the capacity of a property manager carrying on property management business unless the manager has a valid written appointment to act for the person in that capacity

signed by the person or by a person authorised to sign on his or her behalf.

- (2) An appointment is not valid for the purposes of subsection (1) unless it is contained in a document that –
 - (a) generally sets out the services to be rendered by the property manager; and
 - (b) if a specific property is the subject of those services, clearly identifies the property; and
 - (c) clearly indicates how any valuable consideration that the manager may receive is to be calculated; and
 - (d) clearly indicates the nature and extent of the expenses that the manager may incur on behalf of the client, and how those expenses are to be recouped; and
 - (e) clearly sets out how either party to the agreement may terminate the appointment and any conditions subject to which it may be terminated.
- (3) An appointment by a person of a property manager named in Part 2(1) of the Register is not a valid appointment for the purposes of subsection (1) unless the person obtaining the signature to the appointment gives a copy of it to the signatory as soon as practicable after it is signed.
- (4) The onus of proof that subsection (3) was complied with is on the person who obtained the signature.

- (5) A property manager must not demand any valuable consideration in contravention of subsection (1).

Penalty: Fine not exceeding 500 penalty units.

- (6) Any valuable consideration received by a property manager in contravention of subsection (1) or (5) is recoverable as a debt by the person from whom the property manager received it.

- (7) A written appointment mentioned in subsection (1), whether or not expressed to be for a fixed period, may be terminated by either party giving to the other 30 days' written notice of termination.

20. Property agent to disclose any benefits

- (1) Except as provided by subsection (3), a property agent must disclose to a person for whom the agent is appointed to act in relation to a property or to a purchase of a property –
- (a) any benefit received by the agent from a third party or given by the agent to a third party in exchange for the referral of business to the agent; or
 - (b) any other benefit the agent receives or is to receive as a result of that appointment.

Penalty: Fine not exceeding 500 penalty units.

- (2) If a property agent fails to comply with subsection (1) –

- (a) any fee or other amount the agent may otherwise have been entitled to receive from the person for whom the agent is engaged to act is not payable; and
 - (b) any such fee or amount paid may be recovered in a court of competent jurisdiction as a debt due to the person who made the payment.
- (3) Subsection (1) does not apply to a benefit worth \$100 or less.
 - (4) In this section –
 - “**benefit**” includes commission.

21. Fees not recoverable in certain circumstances

- (1) A person is not entitled to bring an action to recover any valuable consideration for services provided by the person in the capacity of a real estate agent named in Part 1(1) of the Register unless the person was such a real estate agent both when engaged to act as a real estate agent and when acting as a real estate agent.
- (2) A real estate agent is not entitled to bring an action to recover any valuable consideration for services performed by the agent in the course of any real estate agency business carried on by the agent unless the agent has furnished to the person against whom the action is to be brought a written statement setting out details of those services and the amount claimed in respect of each service.

- (3) A person is not entitled to bring an action to recover any valuable consideration for services provided by the person in the capacity of a property manager carrying on property management business unless the person was a property manager named in Part 2(1) of the Register both when engaged to act as a property manager and when acting as a property manager.
- (4) A property manager is not entitled to bring an action to recover any valuable consideration for services performed by the property manager in the course of carrying on property management business unless the property manager has furnished to the person against whom the action is to be brought a written statement setting out details of those services and the amount claimed in respect of each service.

Division 3 – Offences in respect of property agents

22. Conflict of interest – acquisition of property

- (1) A real estate agent or a person employed or engaged by a real estate agent must not acquire or attempt to acquire, directly or indirectly, an interest in property that the agent is instructed to sell.

Penalty: Fine not exceeding 500 penalty units.

- (2) A real estate agent is guilty of an offence if a person employed or engaged by the agent acquires or attempts to acquire, directly or indirectly, an interest in property that the agent is instructed to sell.

Penalty: Fine not exceeding 500 penalty units.

- (3) A director or similar officer of a real estate agent that is a company must not acquire or attempt to acquire, directly or indirectly, an interest in property that the agent is instructed to sell.

Penalty: Fine not exceeding 500 penalty units.

- (4) A real estate agent that is a company is guilty of an offence if a director or similar officer of the company acquires or attempts to acquire, directly or indirectly, an interest in property that the agent is instructed to sell.

Penalty: Fine not exceeding 500 penalty units.

- (5) It is a defence for a person charged with an offence under subsection (1), (2), (3) or (4) for the person to show that the acquisition was made with the written approval of the owner of the property given before negotiations for the acquisition of the interest were entered into and after a full disclosure of all the relevant facts by the person seeking the approval.

- (6) A person is guilty of an offence under subsection (1), (2), (3) or (4) if the person acquired the interest either in the course of business or in a private capacity.

- (7) Without prejudice to the generality of subsections (1), (2), (3) and (4), a person is taken to acquire an interest in property for the purposes of any of those subsections if an interest in the property is acquired by or on behalf of a relative of the person.

- (8) It is a defence for a person charged with an offence under subsection (1), (2), (3) or (4) for the person to show that –

- (a) the person acted honestly and reasonably; and
 - (b) the person who sold the property is in substantially as good a position as if the provisions of the subsection had been complied with.
- (9) A real estate agent must not, directly or indirectly, demand, receive or hold any valuable consideration in respect of a transaction in which the agent, a person employed or engaged by the agent, or a director or similar officer of the agent has acquired an interest in property in contravention of this section.
- (10) A court before which a person has been convicted of an offence under this section is to order –
- (a) the person to pay to the vendor of the property any profit that was made, or, in the court's opinion, is likely to be made, from the acquisition of the property or from any related transaction; and
 - (b) that any commission or other valuable consideration received or held by a real estate agent in contravention of subsection (9) be paid to the vendor of the property.

23. Conflict of interest – sale of property

- (1) A real estate agent must not, in the course of business as a real estate agent, sell or attempt to sell, directly or indirectly, an interest in property owned by –

- (a) the real estate agent; or
- (b) a person employed or engaged by the real estate agent; or
- (c) where the real estate agent is a company, a director or similar officer of the company; or
- (d) a relative of a person mentioned in paragraph (a), (b) or (c) –

unless a full disclosure of all the relevant facts is made before the sale or the attempt to sell.

Penalty: Fine not exceeding 500 penalty units.

- (2) A court before which a real estate agent has been convicted of an offence under subsection (1) is to order that the agent pay to any purchaser of the property any profit that, in the court's opinion, was made but would not have been made if there had been a full disclosure of all the relevant facts.
- (3) It is a defence for a person charged with an offence under subsection (1)(d) for the person to show that he or she could not reasonably have known that a person was a relative of a person mentioned in paragraph (a), (b) or (c) of subsection (1).

24. Franchising agreements

- (1) In this section –

“franchising agreement” means an agreement that permits a real estate agent to carry on real estate agency business on

the condition that another person who is entitled to carry on real estate agency business (whether in Tasmania or elsewhere) receives any valuable consideration.

- (2) If a real estate agent carries on real estate agency business pursuant to a franchising agreement –
 - (a) each party to the agreement is guilty of an offence under section 144 if the real estate agent fails to comply with that section; and
 - (b) the parties to the agreement are each liable if criminal or fraudulent conduct in the course of the real estate agency business causes pecuniary or property loss to another person.
- (3) A real estate agent carrying on real estate agency business under a franchising agreement must include the name of the franchisee on the premises from which the agent carries on that business.

25. Notice to be displayed by real estate agents

- (1) A real estate agent must display at each authorised place of business, in a conspicuous position where it may be easily read, a notice stating the agent's name and the fact that the agent is a real estate agent.

Penalty: Fine not exceeding 50 penalty units.

- (2) If a real estate agent ceases to carry on real estate agency business at an authorised place of

business, the agent must remove or obliterate the notice as soon as practicable.

Penalty: Fine not exceeding 50 penalty units.

26. Notice to be displayed by property managers

- (1) A property manager named in Part 2(1) of the Register must display at each authorised place of business, in a conspicuous position where it may be easily read, a notice stating the manager's name and the fact that the manager is a property manager.

Penalty: Fine not exceeding 50 penalty units.

- (2) If a property manager ceases to carry on property management business at an authorised place of business the manager must remove or obliterate the notice as soon as practicable.

Penalty: Fine not exceeding 50 penalty units.

27. Requirements of advertisements by real estate agents

A real estate agent who publishes an advertisement in connection with his or her real estate agency business must ensure that the advertisement contains the real estate agent's name and the address of his or her authorised place of business.

Penalty: Fine not exceeding 50 penalty units.

28. Requirements of advertisements by property managers

A property manager named in Part 2(1) of the Register who publishes an advertisement in connection with his or her property management business must ensure that the advertisement contains the property manager's name and the address of his or her authorised place of business.

Penalty: Fine not exceeding 50 penalty units.

29. False advertising, &c., by real estate agents

- (1) A real estate agent must not publish information that the agent knows –
 - (a) falsely states that particular property is to be sold or that a particular business is to be sold; or
 - (b) contains a false or misleading statement or representation in respect of property that is or is stated to be available for purchase, or a business that is or is stated to be available for purchase.

Penalty: Fine not exceeding 500 penalty units.

- (2) In proceedings for an offence under subsection (1), proof of the publication of information that represents a specified person to be a real estate agent is evidence that the person published the information.

30. False advertising, &c., by property managers

- (1) A property manager named in Part 2(1) of the Register must not publish information that the manager knows –
 - (a) falsely states that a particular property is managed by the manager; or
 - (b) contains a false or misleading statement or representation in respect of the property that is or is stated to be available for letting.

Penalty: Fine not exceeding 500 penalty units.

- (2) In proceedings for an offence under subsection (1), proof of the publication of information that represents a specified person to be a property manager is evidence that the person published the information.

31. Name under which real estate agents may carry on business

- (1) Except as provided by subsection (2), a real estate agent must not carry on real estate agency business except under the name of the agent or, where agents are carrying on business in partnership, the names of the agents.

Penalty: Fine not exceeding 50 penalty units.

- (2) The Board may authorise a real estate agent, or agents carrying on business in partnership, to carry on real estate agency business under a name in addition to, or in substitution for, the name of the agent or agents.

- (3) Where subsection (2) applies, the Board is to include the authorised name in the entry in the Register in respect of the agent or agents.
- (4) Subsection (2) is subject to the *Business Names Act 1962*.

32. Name under which property managers may carry on business

- (1) Except as provided by subsection (2), a property manager named in Part 2(1) of the Register must not carry on property management business except under the name of the property manager or, where property managers are carrying on business in partnership, the names of the managers.

Penalty: Fine not exceeding 50 penalty units.

- (2) The Board may authorise a property manager or managers carrying on business in partnership to carry on property management business under a name in addition to, or in substitution for, the name of the manager or managers.
- (3) Where subsection (2) applies, the Board is to include the authorised name in the entry in the Register in respect of the manager or managers.
- (4) Subsection (2) is subject to the *Business Names Act 1962*.

PART 3 – AUCTIONS*Division 1 – Control of general auctioneering business***33. General auctioneering business to be carried on by general auctioneer or real estate agent**

- (1) A person must not carry on all or any part of general auctioneering business or hold himself or herself out as prepared to do so unless the person is a general auctioneer named in Part 3 of the Register or a real estate agent named in Part 1(1) of the Register.

Penalty: Fine not exceeding 1 000 penalty units.

- (2) A person must not conduct a public auction of land unless that person is a real estate agent named in Part 1(1) of the Register and the auction is conducted as part of the real estate agency business of the agent.

Penalty: Fine not exceeding 50 penalty units.

- (3) Despite subsections (1) and (2) –

- (a) a public auction authorised by an Act may be conducted by a person authorised to do so by the Act; and
- (b) a public auction under a writ or process issued by or out of a court may be conducted by a person authorised to do so by the court; and
- (c) a public auction, the gross proceeds of which are to be used for a charitable purpose, may be conducted by a person

who is not an auctioneer or agent mentioned in subsection (1) –

but in each case (whether or not the public auction is being conducted as part of any business) this Part otherwise applies to the auction, and any reference to an auctioneer is to be taken as including a person conducting an auction mentioned in this subsection.

34. Management of general auctioneering business

- (1) A general auctioneer must not carry on general auctioneering business except at an authorised place of business that is managed by the general auctioneer or by a general auctioneer employed by the first-mentioned general auctioneer.

Penalty: Fine not exceeding 50 penalty units.

- (2) A general auctioneer must not manage a place where general auctioneering business is carried on unless it is an authorised place of business for that business.

Penalty: Fine not exceeding 50 penalty units.

35. Name under which general auctioneer may carry on business

- (1) Except as provided by subsection (2), a general auctioneer must not carry on general auctioneering business except under the name of the auctioneer or, where general auctioneers are carrying on business in partnership, the names of the auctioneers.

Penalty: Fine not exceeding 50 penalty units.

- (2) The Board may authorise a general auctioneer or auctioneers carrying on business in partnership to carry on general auctioneering business under a name in addition to, or in substitution for, the name of the auctioneer or auctioneers.
- (3) Where subsection (2) applies, the Board is to include the authorised name in the entry in the Register in respect of the auctioneer or auctioneers.
- (4) Subsection (2) is subject to the *Business Names Act 1962*.

36. Notice to be displayed

- (1) A general auctioneer must exhibit at each authorised place of business, in a conspicuous position where it may be easily read, a notice stating the auctioneer's name and the fact that the auctioneer is a general auctioneer.

Penalty: Fine not exceeding 50 penalty units.

- (2) If a general auctioneer ceases to carry on general auctioneering business at an authorised place of business, the auctioneer must remove or obliterate the notice as soon as practicable.

Penalty: Fine not exceeding 50 penalty units.

37. Requirements of advertisements by general auctioneers

A general auctioneer who publishes an advertisement in connection with his or her general auctioneering business must ensure that the advertisement contains the auctioneer's name and the address of his or her authorised place of business.

Penalty: Fine not exceeding 50 penalty units.

38. False advertising, &c., by general auctioneers

- (1) A general auctioneer must not publish information that the auctioneer knows –
 - (a) falsely states that particular property is to be auctioned; or
 - (b) contains a false or misleading statement or representation in respect of property that is or is stated to be available for public auction.

Penalty: Fine not exceeding 500 penalty units.

- (2) In proceedings for an offence under subsection (1), proof of the publication of information that represents a specified person to be a general auctioneer is evidence that the person published the information.

*Division 2 – Conduct at public auctions***39. Misrepresentations at public auctions**

A general auctioneer offering property for sale by public auction must not knowingly misrepresent the value, composition, structure, character, quality, origin or manufacture of the property.

Penalty: Fine not exceeding 500 penalty units.

40. Bids by owner at public auction

(1) At a public auction of land –

- (a) the owner of the land must not bid or cause a person to bid on the owner's behalf; and
- (b) a person must not bid on behalf of the owner of the land; and
- (c) the auctioneer conducting the auction must not accept a bid from a person who the auctioneer knows is bidding in contravention of paragraph (a) or (b).

Penalty: Fine not exceeding 500 penalty units.

(2) A person must not procure another person to make a bid that is contrary to subsection (1)(b).

Penalty: Fine nor exceeding 500 penalty units.

(3) It is not a defence to a charge for an offence under subsection (1) to prove that the person

making the bid was not in Tasmania at the time the bid was made.

- (4) For the purposes of subsection (1)(b), a bid may be found to have been made on behalf of an owner even though it was not made at the request of, or with the knowledge of, the owner.
- (5) Evidence that a person who made a bid at a public auction had the intention of benefiting the owner in making the bid is evidence that the person made the bid on behalf of the owner.
- (6) It is a defence to a charge for an offence under subsection (1) to prove –
 - (a) that the land that was auctioned was owned by more than one person; and
 - (b) that one or more of those persons was attempting, in good faith, to acquire a greater interest in the land; and
 - (c) that the auctioneer had been advised of the situation by or on behalf of that person before the start of the auction.

41. Permissible owner bids

- (1) Despite section 40, an auctioneer conducting a public auction of land may make a bid on behalf of an owner of the land if –
 - (a) the conditions under which the auction is conducted permit the making of the bid; and
 - (b) before the bidding starts, the auctioneer orally declares at the auction that the

conditions permit the making of the bid;
and

- (c) immediately before or in the process of making the bid, the auctioneer audibly states that the bid is being made on behalf of the owner.
- (2) A bid mentioned in subsection (1) must be made by the auctioneer personally and not by a person acting on behalf of the auctioneer.
- (3) It is sufficient compliance with the requirement of subsection (1)(c) to identify a bid as a bid by an owner if the auctioneer states “vendor bid” in making the bid.
- (4) It is not sufficient compliance with the requirement of subsection (1)(c) to identify a bid as a bid by an owner if the auctioneer merely identifies the owner by name without stating that the bidder is an owner.

Penalty: Fine not exceeding 500 penalty units.

42. Dummy bids

An auctioneer conducting a public auction must not appear to acknowledge the making of a bid if no bid was made.

Penalty: Fine not exceeding 500 penalty units.

43. Offence to falsely acknowledge bid

A person at a public auction must not –

- (a) falsely claim to have made a bid; or
- (b) falsely acknowledge that he or she made a bid.

Penalty: Fine not exceeding 500 penalty units.

44. Conditions of public auctions to be made available before auction starts

- (1) A real estate agent must not conduct a public auction of land unless, a reasonable time before the start of the auction, the agent –
 - (a) has made a copy of the conditions under which the auction is to be conducted available for public inspection; and
 - (b) complies with section 187.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subsection (1) is to be taken not to have been complied with unless –
 - (a) the conditions were made available for public inspection at least 7 days before the start of the auction; and
 - (b) their availability was published in such a manner as to bring their availability to the attention of persons likely to attend the auction; and
 - (c) the conditions were also on display for public inspection immediately before the auction at the place where it was to be conducted.

45. Right to compensation if Part breached

A purchaser at a public auction who has suffered loss or damage as a result of a failure by any person to comply with a provision of this Part has a right to claim compensation from that person.

46. Contrary conditions are void

A condition applying at a public auction that is contrary to, or that purports to restrict or modify a requirement imposed by, this Part is void.

47. Last vendor bid to be identified if property passed in

- (1) This section applies where –
 - (a) a public auction of land is conducted at which any land is not sold; and
 - (b) the last bid made before the public auction stopped was a bid made on behalf of an owner of the land by the auctioneer conducting the auction.

- (2) In making any statement while marketing the land, a person must not state the amount of the last bid without also stating that the bid was a bid made on behalf of an owner of the land.

Penalty: Fine not exceeding 500 penalty units.

- (3) For the purposes of subsection (2), a statement is made by a person while marketing land if it is made by or on behalf of the person –

- (a) in any information published in respect of the land; or
 - (b) orally or in writing to a prospective purchaser of the land.
- (4) A person who advises another person of the amount of the last bid to enable the amount to be published must also advise that person that the bid was a bid made on behalf of an owner of the land.

Penalty: Fine not exceeding 500 penalty units.
- (5) A person who is a publisher of public auction sales results must not publish the fact that any land was passed in for the amount of the last bid without also stating that the bid was a bid made on behalf of an owner of the land.

Penalty: Fine not exceeding 500 penalty units.
- (6) It is a defence to a charge for an offence under subsection (2) or (5) if the person making the statement, or publishing the amount –
 - (a) was not present at the auction; and
 - (b) relied on a statement made by a person who purported to know what had happened at the auction.
- (7) It is sufficient compliance with subsection (2) or (5) if the amount is described as a “vendor bid”.

*Division 3 – Conduct of public and private auctions***48. Interpretation of Division 3**

In this Division –

“auction” means a public or private auction.

49. Certain bidding agreements unlawful

(1) In this section –

“dealer” means a person who in the normal course of business attends auctions to purchase property for resale.

(2) A dealer must not give, agree to give or offer a gift or any other consideration to a person as an inducement or reward for abstaining or having abstained from bidding at an auction.

Penalty: Fine not exceeding 500 penalty units.

(3) A person must not accept, agree to accept or attempt to obtain from a dealer a gift or any other consideration for abstaining or having abstained from bidding at an auction.

Penalty: Fine not exceeding 500 penalty units.

50. Collusive practices prohibited at auctions

(1) In this section –

“unlawful promise” means a promise, expressed or implied, made by a person

that if that person is the successful bidder in respect of property sold at an auction –

- (a) the person to whom the promise was made will have the right to elect to take over as purchaser through the auctioneer the property, or any part of it, at the auction price; or
 - (b) the ownership of the property, or any part of it, will be decided by a specified method.
- (2) A person must not, by means of an unlawful promise made to a person at an auction, induce or attempt to induce the person –
- (a) to abstain from bidding, either generally or for any particular lot; or
 - (b) not to bid, except to a limited extent; or
 - (c) to do any act or thing which may in any way prevent or tend to prevent free and open competition.

Penalty: Fine not exceeding 500 penalty units.

- (3) A person at an auction must not, as a result of an unlawful promise made to that person –
- (a) abstain or agree to abstain from bidding, either generally or for any particular lot; or
 - (b) not bid, except to a limited extent; or

- (c) do or agree to do any other act or thing which may in any way prevent or tend to prevent free and open competition.

Penalty: Fine not exceeding 500 penalty units.

51. Successful bidder to supply information to auctioneer

- (1) A person who makes the successful bid at an auction must, as soon as practicable after the acceptance of the bid, give to the auctioneer –
 - (a) his or her name and address if the bid was made on his or her own behalf; or
 - (b) if the bid was made on behalf of another person, the name and address of the other person.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subsection (1) does not apply if the person who made the successful bid gave the information mentioned in subsection (1)(a) or subsection (1)(b) to the auctioneer before the auction.

52. Certain notices to be given at auction

A general auctioneer or real estate agent must not conduct an auction until notice has been given of the relevant and material parts of sections 40, 42, 43, 49, 50 and 51 in any manner and form approved by the Board.

Penalty: Fine not exceeding 50 penalty units.

Division 4 – Remuneration of general auctioneers**53. Appointment of general auctioneer to be in writing**

- (1) Except by leave of a court, a general auctioneer is not entitled to sue for, recover or retain any valuable consideration for services provided to a person by the auctioneer in the capacity of a general auctioneer unless the auctioneer has a valid written appointment to act for the person in that capacity that is signed by the person or by a person authorised to sign on his or her behalf.
- (2) An appointment is not valid for the purposes of subsection (1) unless it is contained in a document that –
 - (a) generally sets out the services to be rendered by the general auctioneer; and
 - (b) if specific property is the subject of those services, clearly identifies the property; and
 - (c) clearly indicates how any valuable consideration the general auctioneer may receive is to be calculated; and
 - (d) clearly indicates the nature and extent of the expenses the general auctioneer may incur on behalf of the client, and how those expenses are to be recouped.
- (3) An appointment by a person of a general auctioneer is not a valid appointment of the auctioneer for the purposes of subsection (1) unless the person obtaining the signature to the appointment gives a copy of it to the signatory as soon as practicable after it is signed.

- (4) The onus of proof that subsection (3) was complied with is on the person who obtained the signature.
- (5) A general auctioneer must not –
 - (a) demand any valuable consideration in contravention of subsection (1); or
 - (b) demand any valuable consideration from a purchaser of any real property at a public auction conducted by the auctioneer.

Penalty: Fine not exceeding 500 penalty units.

- (6) Any valuable consideration received by a general auctioneer in contravention of subsection (1) or (5) is recoverable as a debt by the person from whom the general auctioneer received it.

54. General auctioneer to disclose any benefits

- (1) A general auctioneer must disclose to a person for whom the auctioneer is appointed to act –
 - (a) any benefit received by the auctioneer from a third party or given by the auctioneer to a third party in exchange for the referral of business to the auctioneer; or
 - (b) any other benefit that the auctioneer receives or is to receive as a result of that appointment.

Penalty: Fine not exceeding 500 penalty units.

- (2) If a general auctioneer fails to comply with subsection (1), any fee or other amount the auctioneer may otherwise have been entitled to receive from the person for whom the auctioneer is engaged to act is not payable and any amount paid may be recovered in a court of competent jurisdiction as a debt due to the person who made the payment.
- (3) Subsection (1) does not apply to a benefit worth \$100 or less.

55. Fees not recoverable in certain circumstances

- (1) A person is not entitled to bring an action to recover any valuable consideration for services provided by the person in the capacity of a general auctioneer unless the person was a general auctioneer both when engaged to act as a general auctioneer and when acting as a general auctioneer.
- (2) A general auctioneer is not entitled to bring an action to recover any valuable consideration for services performed by the auctioneer in the course of any general auction business carried on by the auctioneer unless the auctioneer has furnished to the person against whom the action is to be brought a written statement setting out details of those services and the amount claimed in respect of each service.

PART 4 – REGISTRATION AND QUALIFICATIONS*Division 1 – Registration***56. Board to maintain Register**

- (1) The Board is to maintain a Register of Property Agents.
- (2) The Register is to be divided into 3 Parts.
- (3) Those Parts are to be –
 - (a) Part 1 – Real Estate Agents, which is to contain the name and address of each real estate agent; and
 - (b) Part 2 – Property Managers, which is to contain the name and address of each property manager; and
 - (c) Part 3 – General Auctioneers, which is to contain the name and address of each general auctioneer who may carry on general auctioneering business.
- (4) The Register may be kept in any form that permits its contents to be readily inspected in a legible form by any member of the public in accordance with section 61.

57. Part 1 of Register

- (1) Part 1 of the Register is to be divided into –
 - (a) Division (1), which is to contain the name and address of each person who is carrying on real estate agency business

and show, in addition, the address of each place where that person is carrying on that business and the name under which that person is doing so; and

- (b) Division (2), which is to contain the names and addresses of all other such persons.
- (2) Where a real estate agent named in Part 1 of the Register is a company, the entry in respect of the agent is also to contain the name and address of each of the directors of the company who is a real estate agent.

58. Part 2 of Register

- (1) Part 2 of the Register is to be divided into –
- (a) Division (1), which is to contain the name and address of each person who is carrying on property management business and show, in addition, the address of each place where that person is carrying on that business and the name under which that person is doing so; and
 - (b) Division (2), which is to contain the names and addresses of all other such persons.
- (2) Where a property manager named in Part 2 is a company, the entry in respect of the manager is also to contain the name and address of each of the directors of the company who is a property manager.

59. Part 3 of Register

- (1) Part 3 of the Register, which is to contain the name and address of each person who is carrying on general auctioneering business, is to show, in addition, the address of each place where that person may carry on that business and the name under which that person may do so.
- (2) Where a general auctioneer named in Part 3 of the Register is a company, the entry in respect of the general auctioneer is also to contain the name and address of each of the directors of the company who is a general auctioneer.

60. Application for registration

- (1) The Board is to enter the name of a person in the appropriate Part of the Register if –
 - (a) the person makes an application to the Board accompanied by the prescribed fee and evidence sufficient to prove the qualifications of the person to be registered; and
 - (b) the Board is satisfied that the person has those qualifications and is a fit and proper person to be a property agent.
- (2) The Board may request an applicant to produce further evidence to satisfy the Board that the applicant is qualified to be registered or is a fit and proper person to be a property agent.
- (3) A person is not a fit and proper person to be registered in Part 1(1), Part 2(1) or Part 3 of the Register if the person –

- (a) is an undischarged bankrupt; or
 - (b) has made a composition or arrangement with creditors and the debts to which the composition or arrangement relates have not been paid in full or the terms of the composition or arrangement have not been fulfilled.
- (4) Where the applicant is a company, it is not a fit and proper person to be registered if it –
- (a) is in receivership or in liquidation; or
 - (b) has taken proceedings for voluntary winding-up (except for the purpose of reorganisation); or
 - (c) has a winding-up order made in respect of it by the Supreme Court; or
 - (d) has a director, manager, secretary or other similar officer who is disqualified or suspended from being a property agent by virtue of section 120.
- (5) Subsections (3) and (4) do not prejudice the ability of the Board to determine that a person is not a fit and proper person to be registered as a property agent on any other grounds.

61. Board to make Register available for public inspection

The Board is to make the Register available for public inspection at all reasonable times.

62. Property agent may apply for licence

- (1) A person named in the Register may apply for a licence.
- (2) An application for a licence is to be made to the Board and is to be accompanied by the prescribed fee and evidence sufficient to satisfy the Board that the person is the person entitled to the licence.
- (3) A licence is conclusive evidence that at the date of its issue –
 - (a) the name of the person named in the licence was in the Register; and
 - (b) that name was entered in the Part of the Register specified in the licence.

Division 2 – Qualifications**63. Qualifications for registration as real estate agent**

- (1) The name of a person, not being a company, may be entered in Part 1 of the Register if the person –
 - (a) has the prescribed educational qualifications; and
 - (b) has been engaged full-time as a property manager or property consultant for a total period of at least 2 years during the 5-year period immediately preceding the application for registration.
- (2) The name of a person may also be entered in Part 1 of the Register if the person's name has

been in the Register at any time during the 5-year period immediately preceding the application for registration.

- (3) The name of a person may also be entered in Part 1 of the Register if the person –
 - (a) has, at any time during the 5-year period immediately preceding the application, been authorised under the law of another State or a Territory of Australia to carry on the business of a real estate agent in that State or Territory; and
 - (b) has been engaged full-time as a real estate agent in another State or a Territory of Australia for a total period of at least 2 years during the 5-year period immediately preceding the application for registration; and
 - (c) except in the case of a company, has satisfied the Board, by examination or inquiry, that he or she has sufficient knowledge and experience of real estate agency business to be able to carry on that business.
- (4) The name of a company may be entered in Part 1 of the Register if at least one of its directors or a person holding a similar position in the company is also named in that Part.

64. Qualifications for registration as property manager

- (1) The name of a person, not being a company, may be entered in Part 2 of the Register if the person satisfies the Board, by examination or

inquiry, that the person has sufficient knowledge and experience of property management business to be able to carry on that business.

- (2) The name of a company may be entered in Part 2 of the Register if at least one of its directors or a person holding a similar position in the company is also named in that Part.

65. Qualifications for registration as general auctioneer

- (1) The name of a person may be entered in Part 3 of the Register if the person satisfies the Board, by examination or inquiry, that the person has sufficient knowledge and experience of general auctioneering business to be able to carry on that business.
- (2) The name of a company may be entered in Part 3 of the Register if at least one of its directors or a person holding a similar position in the company is also named in that Part.

66. Continuing education

- (1) Despite any other provision of this Division to the contrary, a person ceases to be qualified to continue to be named in the Register unless, within a period specified by the Board, the person has undertaken any continuing education course specified by the Board.
- (2) A person named in Part 1(1), Part 2(1) or Part 3 of the Register must maintain a register containing details of the continuing education

undertaken in accordance with subsection (1) by the person and by any relevant employee.

Penalty: Fine not exceeding 50 penalty units.

- (3) The person referred to in subsection (2) must make the register available to the Board upon being requested by the Board.

Penalty: Fine not exceeding 50 penalty units.

Division 3 – Period of validity of registration

67. Period of validity of registration

- (1) Except as otherwise provided by this Division, if the name of a person has been entered in the Register, it remains in the Register –
- (a) if the person pays the prescribed annual registration fee when it becomes due; and
 - (b) if the Board remains satisfied that the person continues to have the qualifications required to be named in the Register.
- (2) The Board is to remove the name of a person from the Register if –
- (a) the person asks the Board to do so; or
 - (b) the Board is required to do so by or in accordance with this Act; or
 - (c) the Board is satisfied that the person has ceased to be qualified to continue to be named in the Register; or

- (d) the person fails to pay any prescribed annual registration fee within 30 days after it became due for payment.
- (3) Despite any other provision of this Division, if a person named in Part 1(1), Part 2(1) or Part 3 of the Register dies, the personal representatives of that person are to be taken to be named in the Register for one year from the death of the person.

68. Effect of suspension of registration

While the registration of a person is suspended, the person is to be taken as not being named in the Register for the purposes of this Act.

PART 5 – PROPERTY AGENTS BOARD*Division 1 – Establishment of Board***69. Property Agents Board established**

- (1) There is established a Board called the Property Agents Board.
- (2) The Board –
 - (a) is a body corporate with perpetual succession; and
 - (b) may sue and be sued in its corporate name; and
 - (c) may have a seal.
- (3) If the Board has a seal –
 - (a) it is to be kept and used as authorised by the Board; and
 - (b) all courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that the document was duly sealed by the Board.

70. Membership of Board

- (1) The Board consists of 5 members appointed by the Governor.
- (2) Two of the members are to be property agents who have at least 5 years' experience as property agents.

- (3) One of the members referred to in subsection (2) is to be a person nominated by the body that the Minister is satisfied represents the views of the majority of property agents and the other is to be a person nominated by the Minister from a list of 4 persons supplied by that body.
- (4) A further 2 members are to be people nominated by the Minister who are not property agents.
- (5) The remaining member, who is to be the Chair of the Board, is to be a legal practitioner of at least 5 years' standing who has legal experience in areas of law relevant to the position.
- (6) A member may be appointed for a term not exceeding 3 years, which is to be specified in the member's instrument of appointment and, if eligible, may be reappointed.
- (7) A person may accept appointment as a member of the Board and any remuneration payable to a member despite the fact that the person is the holder of an office under an Act that requires the holder of the office to devote the whole of his or her time to the duties of the office.
- (8) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member of the Board.

71. Conditions of appointment to Board

- (1) A member of the Board is to receive remuneration and allowances determined by the Minister, which are to be specified in the member's instrument of appointment.

- (2) Although a person may be a member of the Board in conjunction with State Service employment, a member who is a State Service officer or State Service employee is not entitled to any remuneration or allowances as a member of the Board unless the Minister administering the *State Service Act 2000* decides otherwise.

72. Vacancy in Board membership

- (1) A person ceases to be a member of the Board if the person –
 - (a) dies; or
 - (b) resigns by written notice given to the Minister; or
 - (c) is removed from office under subsection (3) or (4); or
 - (d) ceases to possess any qualification the member was required to possess to be appointed a member of the Board.
- (2) A person ceases to be a member of the Board if the person's term of appointment ends and the person is not reappointed.
- (3) The Governor may terminate the appointment of a person as a member of the Board if the member –
 - (a) is absent from 3 consecutive meetings of the Board without the Board's approval; or
 - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt

- or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
- (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a term exceeding 12 months; or
- (d) fails, without reasonable excuse, to comply with the member's obligation under this Act to disclose an interest; or
- (e) is convicted of an offence against this Act.
- (4) The Governor may also terminate the appointment of a person as a member of the Board if the Governor is satisfied that the member is unable to perform, or is not performing adequately or competently, the duties of a member of the Board.

73. Validity of actions by Board

- (1) Anything done by the Board or by a person acting on the direction of the Board is not invalid despite the fact that at the time it was done the Board had less than 5 members.
- (2) Anything done by the Board or by a person acting on the direction of the Board is not invalid despite the fact that it is later discovered –

- (a) that at the time the action was taken there was a defect in the appointment of a member; or
- (b) that a member did not possess or had ceased to possess the qualifications required to be appointed to be a member of the Board.

74. Presumptions in respect of Board

In proceedings by or against the Board, proof is not required of its constitution, of the appointment of its members, of any resolution of the Board or of the presence of a quorum at a meeting of the Board unless evidence is given that calls the matter into question.

Division 2 – Meetings of Board

75. Meetings of Board

- (1) The Chair of the Board may convene a meeting of the Board at any time and is to do so if so requested by at least 2 other members of the Board.
- (2) The Chair convenes a meeting of the Board by giving reasonable notice of the time and place of the meeting to the other members of the Board.
- (3) If at any time there is no Chair of the Board or if the Chair is unable to perform the duties of Chair, a meeting of the Board may be convened by 2 or more members of the Board giving reasonable notice of the time and place of the meeting to the other members of the Board.

76. Presiding at meetings of Board

- (1) The Chair of the Board is to preside at meetings of the Board at which the Chair is present.
- (2) If at the time of a meeting of the Board there is no Chair of the Board or if the Chair is not present, the members present are to elect one of their number to preside.

77. Procedure at meetings of Board

- (1) A meeting of the Board has a quorum if 3 members are present and if one of them is a property agent and another member is not a property agent.
- (2) Such a meeting of the Board may transact any business of the Board.
- (3) A question at a meeting of the Board is to be decided by a majority of votes of the members present and voting, with the member presiding having only a deliberative vote.
- (4) On an equality of votes on a question, the question stands adjourned until the next meeting of the Board unless sooner withdrawn by the member who moved the question.
- (5) The Board is to keep accurate minutes of its meetings.
- (6) Except as otherwise provided by this Act, the Board may regulate the conduct of its business.
- (7) The Board may, in particular, allow a member to participate in a meeting of the Board by telephone, by video conferencing or by any other

means approved by the Board, and, in such a case, determine that the member is present at the meeting for the purpose of this Part.

- (8) A meeting of the Board is not to be open to the public, but the Board may allow a person to attend a meeting if it is satisfied that it is appropriate to do so.
- (9) The Board is to determine the way in which its decisions are to be published.
- (10) It may determine that all or any part of a decision is not to be published where to do so might reveal –
 - (a) privileged information or information communicated to the Board in confidence; or
 - (b) information that concerns a person's personal affairs, finances or business arrangements.

78. Interests to be disclosed by Board members

- (1) This section applies to a member of the Board who has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered, or about to be considered, by the Board.
- (2) The member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Board.

- (3) Except with the approval of the Board, the member must not –
 - (a) be present during any deliberation of the Board in relation to the matter; or
 - (b) take part in a decision of the Board in respect of the matter.
- (4) The member must not be present when the Board is considering whether to give its approval under subsection (3).

79. Indemnity

- (1) An action does not lie against a member, employee or agent of the Board or against a member of a committee established by the Board for an act or omission by the member, employee or agent, or by the Board or a committee, in good faith and in the exercise or purported exercise of a function under this Act.
- (2) A person who, in good faith, makes a complaint under Part 6 does not incur personal liability for loss, damage or injury that another person suffers as a result of the complaint being made.

Division 3 – Duty of Board

80. Duty of Board

- (1) It is the duty of the Board –
 - (a) to maintain the Register in accordance with this Act to ensure that only people who have the necessary experience and

qualifications to do so, and are not otherwise unfit to do so, are permitted to act as property agents; and

- (b) to administer the approval of qualifications held by people to ensure that only those that have the prescribed qualifications to do so, and are not otherwise unfit to do so, are permitted to act as property agents; and
- (c) to ensure that property agents comply with the requirements of this Act relating to their conduct in carrying on their businesses or in carrying out their functions and, where they fail to do so, to take appropriate disciplinary action to protect the public and to discourage such conduct; and
- (d) to ensure that people who are not permitted under this Act to do so do not act as property agents; and
- (e) to develop and ensure compliance with a Code of Conduct for property agents; and
- (f) to receive, investigate and determine complaints against property agents; and
- (g) to supervise the trust accounts of real estate agents named in Part 1(1) of the Register, property managers named in Part 2(1) of the Register and general auctioneers named in Part 3 of the Register; and
- (h) to advise property agents on appropriate standards of conduct; and

- (i) to monitor, identify and report to the Minister trends and issues that emerge within the property agents industry; and
 - (j) to carry out educational functions in relation to the property agents industry; and
 - (k) to advise the Minister on matters relating to this Act including its efficacy and on any other matters relevant to the Board's functions or to the property agents industry; and
 - (l) to carry out any other function imposed on the Board by this or any other Act.
- (2) The duty mentioned in subsection (1)(f) includes –
- (a) referring serious complaints to the Tribunal for hearing and determination; and
 - (b) referring complaints involving alleged criminal conduct to the Commissioner of Police.
- (3) The educational functions mentioned in subsection (1)(j) include –
- (a) providing input into establishing the standards of education for property agents; and
 - (b) conducting or supervising the conduct of examinations as necessary; and

- (c) determining the subjects in which property agents are required to qualify; and
 - (d) approving courses of practical instruction on the functions of property agents.
- (4) For the purposes of this section –

“serious complaint” means a complaint in respect of a serious offence, within the meaning of Part 6.

81. Code of Conduct to be developed by Board

- (1) It is a duty of the Board to establish and keep under review a Code of Conduct for property agents to regulate their professional practice, conduct and discipline.
- (2) The Code may relate to provisions of this Act in respect of –
 - (a) the registration of property agents; and
 - (b) the qualifications required for each class of property agent; and
 - (c) the revocation or suspension of, or the imposition of conditions on, the registration of property agents; and
 - (d) the reasons for prohibiting a person from undertaking certain activities within the property agents industry; and
 - (e) the supervision of trust accounts, including the keeping, inspection and auditing of records relating to money

received, held or paid on behalf of clients.

- (3) The Code is to contain guidance on what constitutes unsatisfactory professional conduct and professional misconduct.
- (4) In drawing up the Code or any amendment to it, the Board is to consult with each body that it considers represents the interests of property agents and relevant consumers.
- (5) A requirement of the Code may be made so as to apply –
 - (a) differently according to factors, limitations or restrictions specified in the Code; or
 - (b) to a particular property agent or a defined class of property agents.
- (6) The Board is to cause the Code and every revised edition of it to be printed and issued to each property agent.
- (7) The Board is also to publish the Code in such a manner as to make it easily available to members of the public.
- (8) The Code or any amendment of it is to have effect from a prescribed date.
- (9) The Code or any amendment is to be set out in a Schedule to the regulations.

Division 4 – Powers, &c., of Board**82. Powers of Board**

- (1) The Board has the power to do everything necessary or convenient to be done to enable it to perform its functions.
- (2) This power includes the power to prescribe, publish and charge fees and charges for performing its functions under this Act for which no other fee or charge has been prescribed.
- (3) A fee or charge due to the Board and unpaid may be recovered in a court of competent jurisdiction as if it were a debt due to the Board.

83. Delegation by Board

The Board may delegate any of its functions under this or any other Act except this power of delegation and the power to discipline property agents.

84. Contracts with Board

- (1) The Board may enter into contracts in respect of its functions.
- (2) The Board may enter into a contract with a person to permit the person to exercise a function of the Board on its behalf.

85. Committees of Board

- (1) The Board may establish committees to assist it to perform its functions.
- (2) A committee need not consist of or include members of the Board but may do so.
- (3) The Board may pay a member of a committee remuneration and allowances.
- (4) A member of a committee who is a State Service officer or State Service employee is not to be paid remuneration or allowances mentioned in subsection (3) unless the Minister administering the *State Service Act 2000* determines otherwise.
- (5) A committee is to comply with any written direction given to it by the Board.
- (6) A committee is to keep accurate minutes of its proceedings.
- (7) A committee is to regulate its proceedings in accordance with any directions given by the Board but may otherwise regulate its own proceedings.

86. Employees of Board

- (1) The Board is to employ a suitably qualified person to be its executive officer and may employ such other persons as it considers necessary.
- (2) The executive officer is to act as the secretary to the Board.

- (3) The *State Service Act 2000* does not apply to a person employed by the Board.

87. Confidentiality

- (1) This section applies to a person who obtains information –
- (a) as a member of the Board; or
 - (b) as a member of a committee of the Board; or
 - (c) as an employee or agent of the Board.
- (2) A person to whom this section applies must not divulge the information mentioned in subsection (1) otherwise than as provided by this section.

Penalty: Fine not exceeding 500 penalty units.

- (3) The person may divulge the information –
- (a) in so far as it is necessary to do so to carry out his or her duties under this Act or as an employee or agent of the Board; or
 - (b) in so far as it is necessary to do so to comply with this Act or any other Act; or
 - (c) in evidence before a court.
- (4) A person may divulge the information to all or any of the following:
- (a) the Board;
 - (b) the Minister;

- (c) a member of a law enforcement or prosecution authority of the Commonwealth or another State or a Territory, in relation to a matter referred to the authority by the Minister or reported to the authority by the Board;
 - (d) a regulatory authority of another State or a Territory that has agreed to provide similar information to the Board, if requested, and that has requested the information in connection with any actual or possible disciplinary action against a property agent of that State or Territory;
 - (e) a person to whom the Board has delegated its power to investigate pursuant to this Act.
- (5) Nothing in this section prevents the disclosure of information relating to a complaint to the complainant or to a person acting on behalf of the complainant.
- (6) This section does not apply to information that is in the public domain or information that the person giving the information has agreed may be released to the public.

Division 5 – Finance of Board

88. Funds of Board

- (1) The Board is to keep an account with an authorised deposit-taking institution into which it is to pay money it receives.

- (2) The Board is to use any money received by it to carry out its functions.
- (3) In particular, the Board is to use that money –
 - (a) to ensure compliance with this Act and the Code of Conduct; and
 - (b) to pay people who have performed any function of the Board on its behalf; and
 - (c) to pay the remuneration and allowances of its members and employees; and
 - (d) to pay the costs incurred by the Tribunal.
- (4) The Board may invest any money held by it that is not immediately required in any manner in which a trustee is authorised by law to invest its funds.

89. Accounts

- (1) The Board is to keep proper accounts and records of its financial transactions.
- (2) Within the period of 3 months after the end of each financial year, the Board is to prepare a statement of accounts in a form that accords with the applicable Australian accounting standards.
- (3) The statement of accounts for a financial year must show a true and correct view of –
 - (a) the Board's financial position at the end of the year; and
 - (b) its transactions during the year.

90. Audit

The accounts of the Board must be audited by an auditor.

91. Annual report

- (1) Within 3 months after the end of each financial year, the Board is to prepare and present to the Minister a report on its operations for the previous financial year.
- (2) The report is to contain –
 - (a) the Board's audited statement of accounts prepared for the financial year; and
 - (b) details of the number of names the Board entered in the Register during the financial year; and
 - (c) a statement specifying the number and nature of complaints the Board received in respect of property agents during the financial year; and
 - (d) a statement specifying the manner in which the Board handled complaints during the financial year, setting out the number it dismissed, the number it dealt with itself, the number it referred to the Tribunal and the number outstanding at the end of the financial year both before the Board and the Tribunal; and
 - (e) a statement giving details of any disciplinary action the Board took

against property agents during the financial year; and

- (f) any report the Tribunal made to the Board in accordance with this Act.
- (3) The Board must include in the report any further information required by the Minister and may include any other information it considers appropriate.
- (4) The Minister is to cause a copy of the Board's report to be laid before each House of Parliament within one month of having received it from the Board.

PART 6 – COMPLAINTS AND DISCIPLINE*Division 1 – Complaints about conduct of property agents***92. Interpretation of Part 6**

(1) In this Part –

“conduct”, in relation to a property agent, means conduct of the property agent whether consisting of an act or an omission;

“conduct complaint” means a complaint that appears to involve an issue of unsatisfactory professional conduct or professional misconduct or a conviction for a serious offence;

“professional misconduct” includes –

- (a) unsatisfactory professional conduct of a property agent, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- (b) conduct of a property agent whether occurring when acting as a property agent or occurring otherwise than when acting as a property agent, that would, if established, justify a finding that the property agent is not a fit and proper person to continue to act as a property agent;

“serious offence” means an offence, whether committed in or outside Tasmania, that is –

- (a) an indictable offence against a law of the Commonwealth or the State or Territory in which the offence is committed (whether or not the offence is or may be dealt with summarily); or
- (b) an offence against a law of another State or a Territory that would be an indictable offence against a law of Tasmania if committed in Tasmania (whether or not the offence could be dealt with summarily if committed in Tasmania); or
- (c) an offence against a law of a foreign country that would be an indictable offence against a law of the Commonwealth or Tasmania if committed in Tasmania (whether or not the offence could be dealt with summarily if committed in Tasmania);

“unsatisfactory professional conduct” includes conduct of a property agent when acting as a property agent that falls short of the standard of competence and diligence that a reasonable member of the public is entitled to expect from a reasonably competent property agent.

- (2) Where it is proved that unsatisfactory professional conduct or professional misconduct committed by a person employed or engaged by a real estate agent named in Part 1(1) of the Register, a property manager named in Part 2(1) of the Register or a general auctioneer named in Part 3 of the Register was committed with the consent or connivance of, or was attributable to neglect or default on the part of, the agent, manager or auctioneer, the agent, manager or auctioneer is also guilty of that conduct.

93. Complaints about conduct of property agents

- (1) Any person may make a conduct complaint to the Board about a property agent.
- (2) The fact that a person has suffered no economic loss or that no legal right of the person has been affected by the conduct complained about does not bar the person from making a conduct complaint to the Board about the property agent.
- (3) The fact –
 - (a) that the registration of a property agent was suspended or had been cancelled; or
 - (b) that the right of a person to be employed as a property consultant had been cancelled or suspended –

at the time of the conduct complained about does not affect a person's right under this section to complain to the Board about that conduct.

- (4) The fact that a person has ceased –

- (a) to act as a property agent; or
- (b) to carry on real estate agency business, property management business or general auctioneering business –

since the time of the conduct complained about does not affect a person's right under this section to complain to the Board about that conduct.

- (5) In such a case, this Part applies in relation to the conduct of the person in the same way as it would if the person were qualified to act as a property agent.

94. Application of Code of Conduct

- (1) The Code of Conduct is to contain guidance on what does or does not constitute unsatisfactory professional conduct and professional misconduct.
- (2) The Code is to specify, in particular, the obligation that a real estate agent named in Part 1(1) of the Register, a property manager named in Part 2(1) of the Register or a general auctioneer named in Part 3 of the Register has to supervise people employed or engaged by the agent, manager or auctioneer, and the agent's, manager's or auctioneer's liability if he or she fails to carry out that obligation.
- (3) A failure on the part of a property agent to observe a provision of the Code does not of itself render the property agent liable to disciplinary action being taken against the property agent under this Act, but the failure may be relied upon as tending to establish that the property agent

was guilty of unsatisfactory professional conduct or professional misconduct.

95. Complaints procedure

- (1) A conduct complaint made to the Board is to be made in writing and lodged with the Board's executive officer.
- (2) The executive officer is to record receipt of the complaint by the Board and bring it to the Board's attention at the first practicable opportunity.
- (3) The executive officer is not to accept a conduct complaint unless it –
 - (a) includes the complainant's name and indicates how the complainant would like to be contacted should it be necessary for the Board to do so; and
 - (b) sets out adequate details of the conduct complained about; and
 - (c) sets out the name and address of the property agent against whom the complaint is being made or sufficient information to identify the property agent.
- (4) The executive officer is to provide any reasonable assistance that a person may require in order to lodge a conduct complaint with the Board.

- (5) The Board may at any time require a complainant to provide further particulars of the conduct complained about.
- (6) The Board may require any information provided to it in respect of a conduct complaint to be verified by statutory declaration.
- (7) If the complainant has already complained to the property agent about the conduct of the agent, the conduct complaint mentioned in subsection (3) is to also contain details of the action taken by the complainant and any action taken by the agent as a result of the complaint.

96. Time limits for complaints

- (1) The Board is not to accept a conduct complaint under this Part made more than 2 years after the conduct complained about is alleged to have occurred unless it satisfies itself that –
 - (a) it would not cause injustice to accept the complaint; or
 - (b) it is in the public interest to investigate the complaint.
- (2) The Board may accept a conduct complaint made under this Part although the conduct complained about is alleged to have occurred before the commencement of this section.

97. Dismissal of complaints

- (1) The Board may dismiss a conduct complaint if –

- (a) any information it requests the complainant to provide to it is not provided within a reasonable time; or
 - (b) any information it has requested be verified by a statutory declaration is not verified in that way within a reasonable time.
- (2) The Board may also dismiss a conduct complaint if, after considering all the information provided to it, the Board is satisfied that the complaint is vexatious, misconceived, frivolous or lacking in substance.
- (3) The Board is to dismiss a conduct complaint if it is satisfied that the conduct complained about has been the subject of a previous complaint either by the same or another person and that the appropriate action was taken in respect of the complaint.

98. Withdrawal of complaints

- (1) A complainant may give written notice to the executive officer of the Board withdrawing the conduct complaint.
- (2) The executive officer is to bring the notice to the attention of the Board at the first practicable opportunity.
- (3) Despite the receipt of the notice, the Board may continue investigating the complaint if it is satisfied that it is in the public interest to do so.

- (4) The withdrawal of a conduct complaint is of no effect if the Board has referred the complaint to the Tribunal.
- (5) If the Board agrees to a conduct complaint being withdrawn, it is to notify the property agent that is the subject of the complaint accordingly.
- (6) The withdrawal of a conduct complaint does not prevent a conduct complaint being made by any other person in respect of the same conduct by the property agent.
- (7) Where a conduct complaint in respect of a property agent has been withdrawn, the person who made the complaint has no right to make a further conduct complaint about the same conduct without the approval of the Board and the Board is not to give such approval unless it is satisfied that there exists sufficient justification for accepting the complaint again.

Division 2 – Procedure in dealing with complaints

99. Property agent to be notified of complaint

- (1) The Board must, within 7 days of receiving a conduct complaint in respect of a property agent, give the agent written notice of receipt of the complaint.
- (2) Despite subsection (1), the Board may withhold for a reasonable time giving notice in accordance with that subsection if it is satisfied that giving the notice may prejudice the investigation of the complaint.
- (3) A notice given under subsection (1) must –

- (a) set out details of the conduct complained about; and
- (b) inform the property agent that the Board seeks submissions from the agent in respect of that conduct; and
- (c) contain details of any action already taken by the Board in respect of the complaint.

100. Consideration of conduct complaint

- (1) The Board is to consider a conduct complaint in respect of a property agent and any submissions made by the agent and decide on the action to be taken in respect of the complaint.
- (2) The Board must then give the complainant and the property agent written notification of the action it has decided to take in respect of the complaint.
- (3) If that action is to dismiss the complaint, the Board must notify the complainant of his or her right to apply to the Tribunal for a review of the decision.

101. Conduct complaints must be investigated

- (1) Although it is the duty of the Board to deal with each conduct complaint it receives in accordance with this Part, it need not wait for a conduct complaint before investigating the conduct of a property agent but may of its own volition investigate the conduct of a property agent.

- (2) Where it does so, the resolution of the Board to do so is to be taken as the receipt by the Board of a conduct complaint.
- (3) In such a case, the complainant is to be taken to be the Board, but nothing in this Part is to be taken as requiring the Board to serve any notice on itself.

102. Preliminary investigation of conduct complaints

- (1) The Board may decide that a conduct complaint in respect of a property agent is to be the subject of a preliminary investigation by a committee or by any other person.
- (2) If it does so decide, it may authorise a committee or another person to carry out the investigation on its behalf and to report back on the findings of the investigation.
- (3) If the Board authorises a committee or another person to carry out a preliminary investigation, it must give the property agent concerned written notice of the action it has taken and advise the agent that the agent may make submissions to the committee or other person.

Division 3 – Investigations of conduct complaints

103. Conduct complaints to be investigated efficiently and expeditiously

- (1) The Board is to carry out its investigation of a conduct complaint in respect of a property agent as efficiently and expeditiously as possible.

- (2) The fact that the Board is carrying out an investigation under this Part in respect of the conduct of a property agent does not prejudice any investigation into the affairs of the agent being carried out under any other Part of this Act or under any other Act.

104. Powers of Board to investigate conduct complaints

- (1) The Board may serve a written notice on a property agent, whose conduct is the subject of a conduct complaint to the Board, that requires the agent to take all or any of the actions mentioned in subsection (2).
- (2) The actions referred to in subsection (1) are –
 - (a) to provide the Board with written information of a type specified in the notice, on or before a date also so specified, that is verified by statutory declaration; and
 - (b) to produce, at a time and place specified in the notice, a document also so specified or a copy of it; and
 - (c) to otherwise assist or cooperate with the Board in the investigation of the complaint in a manner specified in the notice.
- (3) If a document is produced to the Board in accordance with this section, the Board may inspect it, make copies of it or any part of it and retain it for so long as may be necessary to investigate the complaint.

- (4) A property agent has no right to refuse to comply with a notice mentioned in subsection (1) on the grounds that to comply with the notice –
 - (a) would affect a lien the agent has over a document; or
 - (b) would involve a breach of confidence.
- (5) A property agent who, when required to take all or any action mentioned in subsection (2), fails to take all or any of those actions or who provides written information or a document that is false or misleading in a material particular is guilty of professional misconduct.

105. Board may obtain search warrant to enter and search premises

- (1) The Board may apply to a magistrate for the issue of a search warrant to enter premises where it is suspected that there may be found evidence relevant to a conduct complaint made to the Board in respect of a property agent.
- (2) A warrant issued under subsection (1) authorises the person named in it, and any person whom that person may reasonably need for assistance, to enter the premises specified in the warrant and to take the action mentioned in this section.
- (3) A person who has entered premises pursuant to a warrant mentioned in subsection (2) may search the premises for documents and information that relate to the conduct complained about.

- (4) If any such documents are found they may be inspected and copies may be taken of them or of any part of them.
- (5) The documents may be taken from the premises for the purpose of inspection and taking copies of them.
- (6) If it is thought that relevant information may be found on a computer on the premises, access may be gained to the computer and the information stored on it may be downloaded and retained.
- (7) The computer may be taken from the premises for the purpose referred to in subsection (6) so long as adequate arrangements are made to enable the business of the property agent to continue.

106. Interim order for suspension of registration or qualification

- (1) If, during the investigation of a conduct complaint in respect of a property agent, the Board is satisfied that it is necessary in the public interest to do so, it may by written notice sent to the property agent –
 - (a) suspend the registration of the property agent; or
 - (b) in the case of a property consultant, disqualify the property consultant from being employed as a property consultant –

in each case for a period to be specified in the notice.

- (2) If at any time the Board is satisfied that it is necessary in the public interest to do so, it may, by written notice sent to the property agent, extend the suspension or disqualification period for a further period to be specified in the notice.
- (3) The Board must, by written notice sent to the property agent, revoke the suspension or disqualification as soon as it is satisfied that doing so would not prejudice the public interest.
- (4) A property agent may appeal to the Tribunal against a suspension or disqualification imposed on the agent in accordance with this section.
- (5) The Tribunal may –
 - (a) confirm the suspension or disqualification; or
 - (b) if it is satisfied that doing so would not prejudice the public interest, revoke the suspension or disqualification.

107. Referral of conduct complaints

- (1) After the Board has considered a conduct complaint and any report on a preliminary investigation of it, the Board must decide whether the complaint should be referred to the Tribunal.
- (2) The Board need not refer a complaint to the Tribunal if it is satisfied that –

- (a) there is insufficient evidence to substantiate the complaint; or
 - (b) the evidence appears to indicate that the conduct complained about only amounts to minor misconduct that can adequately be dealt with by the Board.
- (3) In any other case, the Board must refer a conduct complaint to the Tribunal.

108. Procedure for minor misconduct

- (1) If the Board, after considering a conduct complaint in respect of a property agent, decides that the evidence it has indicates that the conduct only amounts to minor misconduct that can adequately be dealt with by the Board, it may, by written notice sent to the property agent, require the agent to provide the Board with a written explanation of the conduct before a date specified in the notice, being a date not sooner than 14 days after the notice is sent.
- (2) If the conduct could possibly relate to the physical or mental capacity of the property agent, the Board may, by written notice sent to the property agent, require the agent to undergo a medical examination before a date specified in the notice, being a date not sooner than 28 days after the notice is sent.
- (3) A notice under subsection (1) or (2) is to –
- (a) specify the conduct complained about; and

- (b) inform the property agent that, instead of complying with the notice, the agent may request the Board to refer the complaint to the Tribunal for determination.
- (4) If the property agent complies with the requirement of a notice mentioned in subsection (1) or (2), the Board is to determine if the complaint has been substantiated.
- (5) If it decides that there is insufficient evidence to substantiate the complaint, it must dismiss the complaint and advise the property agent and complainant accordingly.
- (6) However, if it is satisfied that the evidence substantiates the complaint, it may do either or both of the following:
 - (a) caution or reprimand the property agent;
 - (b) accept an undertaking from the agent to take or refrain from taking action specified by the Board.
- (7) The Board must refer a complaint to the Tribunal if –
 - (a) at any time the property agent requests that it be referred to the Tribunal; or
 - (b) the property agent fails to comply with a notice mentioned in subsection (1) or (2); or
 - (c) at any time the Board decides that the conduct amounts to more than minor misconduct that can adequately be dealt with by the Board.

109. Appeals against determinations

- (1) A person who has been sent a notice by the Board, specifying any action the Board has taken in accordance with this Part in respect of a conduct complaint made to it, may, within 28 days after the notice is sent, appeal to the Tribunal against the action taken.
- (2) An appeal under this section suspends the action taken by the Board.
- (3) In this section –

“action taken by the Board” includes a decision of the Board.

110. Procedure if offence suspected

- (1) If, at any time while considering a conduct complaint in respect of a property agent, the Board or Tribunal believes that the evidence it has indicates that a person has committed a criminal offence, it must provide the evidence to the Commissioner of Police.
- (2) It must also –
 - (a) suspend its consideration of the complaint; and
 - (b) take such other action under this Act as it considers is in the public interest.

Division 4 – Establishment of Tribunal**111. Application**

- (1) This Division applies if under this Act any action is required to be taken by the Tribunal.
- (2) Despite references in this Act to “the Tribunal”, there may at any one time be established in accordance with this Division more than one Tribunal differently constituted other than in respect of its President.
- (3) If under this Act any action is to be taken by the Tribunal and –
 - (a) no Tribunal has been established under this Division to take that action; or
 - (b) a Tribunal established under this Division is for any reason unable to take that action –

a Tribunal or further Tribunal is to be established in accordance with this Division.

112. Establishment of Tribunal

A Tribunal established in accordance with this Division is to consist of –

- (a) the President of the Tribunal; and
- (b) a person chosen by the President from the members of the Panel referred to in section 114(1)(a); and

- (c) a person chosen by the President from the members of the Panel referred to in section 114(1)(b).

113. President of Tribunal

- (1) The President of the Tribunal is to be appointed by the Governor and is to be a legal practitioner of at least 5 years' standing who has legal experience in areas of law relevant to the position.
- (2) The President of the Tribunal may be appointed for a term not exceeding 3 years, which is to be specified in the President's instrument of appointment, and is eligible to be reappointed.
- (3) The President of the Tribunal is to receive remuneration and allowances determined by the Minister, which are to be specified in the President's instrument of appointment.
- (4) The *State Service Act 2000* does not apply in relation to the President of the Tribunal in his or her capacity as the President.
- (5) The Governor may terminate the appointment of a person as President of the Tribunal if the person –
 - (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the President's creditors or makes an assignment of the President's remuneration or estate for their benefit; or

- (b) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a term exceeding 12 months; or
 - (c) is convicted of an offence under this Act.
- (6) The Governor may also terminate the appointment of a person as President of the Tribunal if the Governor is satisfied that the person is unable to perform, or is not performing adequately or competently, the duties of President of the Tribunal.

114. Members of Panel

- (1) The Panel referred to in section 112 is to consist of 10 persons appointed by the Minister of whom –
 - (a) five are persons who have had at least 5 years' experience as property agents and are appointed from a list of persons nominated by the body that the Minister is satisfied represents the views of the majority of property agents; and
 - (b) five are persons who the Minister considers represent the interests of consumers.
- (2) A person may accept appointment as a member of the Panel and any remuneration and allowances payable to a member despite the fact that the person is the holder of an office under an Act that requires the holder of the office to devote the whole of his or her time to the duties of the office.

- (3) The *State Service Act 2000* does not apply in relation to a member of the Panel in his or her capacity as a member of the Panel.
- (4) A member of the Panel is to receive remuneration and allowances, when sitting as a member of the Tribunal, which are determined by the Minister, and are to be specified in the member's instrument of appointment.
- (5) Although a person may be a member of the Panel in conjunction with State Service employment, a member of the Panel who is a State Service officer or State Service employee is not entitled to any remuneration or allowances as a member of the Panel unless the Minister administering the *State Service Act 2000* decides otherwise.
- (6) A member of the Panel holds office at the pleasure of the Minister.
- (7) A member of the Panel may resign from office by giving the Minister written notice of resignation.

115. Meetings of Tribunal

- (1) All 3 members are a quorum for a hearing of the Tribunal.
- (2) The Tribunal may appoint one or more persons to sit with the members of the Tribunal to assist them when hearing a complaint or appeal.
- (3) The Tribunal is to convene at times and places determined by the President of the Tribunal.

- (4) The Board is to appoint one of its employees to be the registrar of the Tribunal.

116. Responsibilities of Tribunal and Board

- (1) The President of the Tribunal is to submit a report on the activities of the Tribunal to the Board whenever requested to do so by the Board.
- (2) The report is to contain such information in respect of the activities of the Tribunal as the Board may specify.
- (3) The Board is to pay the expenses of running the Tribunal.

117. Powers of Tribunal

- (1) The Tribunal may –
 - (a) summon a person to appear before it to give evidence or to produce a document specified in the summons; and
 - (b) require a person appearing before it to produce a document; and
 - (c) require a person appearing before it to give evidence on oath or affirmation; and
 - (d) require a person appearing before it to answer questions truthfully.
- (2) A person must comply with a requirement made of the person in accordance with subsection (1).

Penalty: Fine not exceeding 500 penalty units.

- (3) The Tribunal may proceed with and determine a complaint despite the absence of a person who has been summoned to appear.
- (4) The Tribunal may adjourn a hearing from time to time and from place to place.
- (5) A summons under subsection (1) is to be in writing and must state the date, time and place at which the person is to appear.
- (6) The date mentioned in subsection (5) must not be sooner than 14 days after the date on which the summons is served.

118. Requirements of summons to property agent

- (1) This section applies to a summons sent by the Tribunal to a property agent if the Tribunal is to hear a conduct complaint in respect of the agent.
- (2) The summons must –
 - (a) set out particulars of the conduct to which the hearing will relate; and
 - (b) inform the property agent that he or she is entitled to be represented by a legal practitioner or any other person in the hearing; and
 - (c) state that the proceedings will not be open to the public unless the Tribunal considers it in the public interest to provide otherwise; and
 - (d) specify the date, time and place at which the property agent is required to appear.

- (3) The summons may contain such other information as the Tribunal considers necessary or appropriate.
- (4) The date mentioned in subsection (2)(d) must not be sooner than 14 days after the date on which the summons is served.

119. Procedures at hearing by Tribunal

- (1) When the Tribunal is hearing a conduct complaint in respect of a property agent, it –
 - (a) must proceed with as little formality and with as much expedition as a proper consideration of the complaint permits; and
 - (b) is not bound by the rules of evidence; and
 - (c) may inform itself on any matter in any way it considers appropriate; and
 - (d) must not admit the public except to such extent as it considers it is appropriate to do so in the public interest.
- (2) However, nothing in this section is to be interpreted as indicating that the Tribunal is not bound by the rules of natural justice.

Division 5 – Action following hearing**120. Determination by Tribunal**

- (1) If, after hearing a conduct complaint in respect of a property agent, the Tribunal finds the property agent to have been guilty of the conduct that was the subject of the complaint, it may take one or more of the following actions:
 - (a) suspend the registration of the property agent for a period not exceeding 5 years or, in the case of a property consultant or assistant property manager, disqualify that person from being employed as a property consultant or assistant property manager for a period not exceeding 5 years;
 - (b) revoke the registration of the person and prohibit the Board from registering the person without the approval of the Tribunal or, in the case of a property consultant or assistant property manager, prohibit any property agent from employing the consultant or assistant property manager, without the approval of the Tribunal;
 - (c) prohibit the property agent from conducting all or any part of real estate agency business, property management business or general auctioneering business, as the case may be, for a period not exceeding 5 years;

- (d) impose on the property agent a fine not exceeding an amount equivalent to 1 000 penalty units;
 - (e) prohibit the property agent from conducting all or any part of real estate agency business, property management business or general auctioneering business, as the case may be, except in accordance with conditions, restrictions or limitations specified by the Tribunal;
 - (f) require the property agent to take or refrain from taking actions specified by the Tribunal;
 - (g) caution or reprimand the property agent.
- (2) If the Tribunal imposes a fine, it must specify a period within which the fine is to be paid.
- (3) The Tribunal may, in addition to any other action it takes, require a property agent carrying on real estate agency business, property management business or general auctioneering business, as the case may be, to do either or both of the following:
- (a) submit the business to periodic supervision or inspection by a person appointed by the Tribunal;
 - (b) undertake a course of training of a type specified by the Tribunal.
- (4) The Tribunal may accept an undertaking from a property agent to take or refrain from taking action specified by the Tribunal, either generally or during a period specified by the Tribunal, as an alternative to the Tribunal taking action

against the property agent in accordance with subsection (2).

- (5) Nothing under this section is to be taken as depriving any person who has suffered damage as a result of the action of a property agent of any right the person may have to take any action against the property agent in respect of that damage.

121. Costs and expenses of hearings

- (1) The Tribunal may make an order for costs in respect of a hearing before it.
- (2) The Tribunal may make an order for costs against the Board where it considers it appropriate to do so.
- (3) An order for costs may be enforced as if the costs were a debt due to the person to whom they were awarded.

122. Notice of action

- (1) This section applies when the Tribunal has concluded a hearing.
- (2) The Tribunal must as soon as practicable give written notice of its decision and its reasons for making that decision to the Board, the property agent and the complainant.
- (3) The notice must specify –
 - (a) any action it has taken under section 120;
and

- (b) any right of appeal that the property agent may have; and
 - (c) details of any order for costs that the Tribunal has made.
- (4) Action taken by the Tribunal in accordance with section 120(2) does not take effect until the expiration of the period within which the property agent may lodge an appeal against the decision.
 - (5) If the property agent lodges an appeal against the decision of the Tribunal, any action taken by the Tribunal does not take effect until the appeal is determined or withdrawn.
 - (6) Upon a decision of the Tribunal taking effect, the Board may publish the decision in such manner as it considers will best bring it to the attention of those affected or likely to be affected by the decision.

123. Indemnity

An action does not lie against the President of the Tribunal or a member of a panel for an act or omission by the President or member made in good faith and in the exercise or purported exercise of a function under this Division.

*Division 6 – Suspension and disqualification***124. Power of Board to suspend registration or to disqualify**

- (1) The Board may, by written notice sent to a property agent –
 - (a) suspend the registration of the property agent for a period not exceeding 12 months; or
 - (b) in the case of a property consultant or assistant property manager, disqualify that person from being employed by a property agent as a property consultant or assistant property manager for a period not exceeding 12 months.
- (2) The Board may take action under subsection (1) if it is satisfied that the property agent has failed –
 - (a) to pay a fine imposed on the property agent by the Tribunal within the specified time; or
 - (b) to comply with a requirement made of the property agent by the Board or the Tribunal in accordance with section 118 or 120; or
 - (c) to honour an undertaking given to the Board or Tribunal.
- (3) The Board may also take action under subsection (1) if it is satisfied that it is necessary to do so to inquire into a conduct complaint made against the property agent or to inquire

into a matter that could be the subject of such a complaint.

- (4) The Board may also take action under subsection (1) if the property agent has been found guilty of an offence that the Board considers makes it inappropriate that the property agent should continue to act as a property agent.
- (5) The Board may also take action under subsection (1) if the right of the property agent to act as a property agent under the law of another jurisdiction has been suspended or revoked for a reason relating to the property agent's professional conduct or physical or mental capacity.
- (6) The suspension or disqualification may be a total or a partial suspension or disqualification.
- (7) The Board is not required to give a property agent an opportunity to be heard before suspending the agent's right to act as a property agent or disqualifying the agent from being employed as a property consultant or assistant property manager, but may do so.
- (8) The notice mentioned in subsection (1) must set out –
 - (a) whether the suspension or disqualification is total or partial and, if it is partial, the activities of the property agent to which the suspension or disqualification applies; and
 - (b) the reasons for the suspension or disqualification; and

- (c) the period of the suspension or disqualification; and
 - (d) the property agent's right of appeal; and
 - (e) if that period is not to start immediately, when it is to start.
- (9) A notice under subsection (1) has effect in accordance with its terms.
- (10) If the Board considers it to be in the public interest to do so, it may publish details of a suspension or disqualification under this section in such manner as it considers will best bring the suspension or disqualification to the attention of those persons affected by it or likely to be affected by it.

125. Revocation of suspension or disqualification

- (1) If the Board or Tribunal has suspended the registration of a property agent or disqualified a person from being employed as a property consultant or assistant property manager, it may revoke the suspension or disqualification totally or partially if it is satisfied that it is not against the public interest to do so.
- (2) If the Board considers it to be in the public interest to do so, it may publish details of any revocation of a suspension or disqualification under this section in such manner as it considers will best bring the revocation to the attention of those persons affected by it or likely to be affected by it.

Division 7 – Appeals

126. Right to appeal decisions of Board

- (1) An aggrieved person may appeal to the Tribunal against any decision of the Board.
- (2) In particular, a person may appeal against a decision of the Board –
 - (a) to refuse to register the person; or
 - (b) to suspend the person’s right to act as a property agent.
- (3) An appeal under this section is to be made within 14 days after notice of the Board’s decision is given to the person or within such further period as the Tribunal considers is appropriate in the interest of justice.

127. Right to appeal decisions of Tribunal

- (1) A person, including the Board, may appeal under the *Magistrates Court (Administrative Appeals Division) Act 2001* against any decision of the Tribunal.
- (2) An appeal under this section is to be made within 21 days after notice of the Tribunal’s decision is given to the person or Board, or within such further period as a magistrate considers is appropriate in the interest of justice.
- (3) Pending the hearing and determination of the appeal, the court may, on the application of the appellant, grant such temporary relief as it considers appropriate.

**PART 7 – CONTROL OF PROPERTY AGENTS
CARRYING ON BUSINESSES**

*Division 1 – Protection of trust money, and appointment of
receivers and managers*

128. Protection of trust money

- (1) This section applies where the Board considers it necessary to protect trust money in a trust account with an authorised deposit-taking institution held by –
 - (a) a real estate agent named in Part 1(1) of the Register; or
 - (b) a property manager named in Part 2(1) of the Register; or
 - (c) a general auctioneer named in Part 3 of the Register.
- (2) The Board may, by notice served on the authorised deposit-taking institution that gives details of the trust account and is signed by the Chair of the Board or by an officer of the Board authorised to do so, instruct the authorised deposit-taking institution not to permit any withdrawal to be made from the account without the Board's written consent until the Board instructs it otherwise.
- (3) An authorised deposit-taking institution must comply with an instruction contained in a notice served on it in accordance with subsection (2).

Penalty: Fine not exceeding 50 penalty units.

129. Appointment of receiver or manager

- (1) This section applies where the Board is of the opinion that a defalcation has been or may have been committed in relation to a trust account of –
 - (a) a real estate agent named in Part 1(1) of the Register; or
 - (b) a property manager named in Part 2(1) of the Register; or
 - (c) a general auctioneer named in Part 3 of the Register.
- (2) This section also applies where the Board is of the opinion that a person is unable to obtain trust money held by a property agent mentioned in subsection (1) due to –
 - (a) the mental or physical infirmity or death or disappearance of the property agent; or
 - (b) the suspension or revocation of the right of the property agent to carry on real estate agency business, property management business or general auctioneering business, as the case may be; or
 - (c) the suspension or termination of the real estate agency business, property management business or general auctioneering business of the property agent for any other reason.
- (3) Where this section applies, the Board may apply to a magistrate for the appointment of a person to be –

- (a) a receiver of the trust money of the property agent; or
 - (b) the manager of the business of the property agent.
- (4) Unless a magistrate otherwise determines, a copy of an application under subsection (3) is to be served on the property agent at least 24 hours before the hearing of the application.
- (5) A magistrate, on considering an application under subsection (3), may appoint a receiver of the trust money of the property agent.
- (6) The magistrate may also appoint a person qualified to do so –
 - (a) to manage the business of the property agent for a period to be specified by the magistrate; or
 - (b) to carry on that business with a view to winding it up in the interests of the clients of the property agent.
- (7) A magistrate may appoint the same person to be both a receiver under subsection (5) and a manager under subsection (6).
- (8) The Board is to serve a copy of an order of the magistrate appointing a receiver or manager on the property agent and on any other person specified by the magistrate.
- (9) The copy is to be served as soon as practicable.
- (10) A magistrate may for sufficient reason dispense with service in accordance with subsection (8) generally or in respect of any particular person.

130. Duty of receiver

- (1) A receiver appointed in respect of the trust money of a property agent is to –
 - (a) take control of any trust money in the possession or under the control of the property agent; and
 - (b) gather in any other trust money.
- (2) The receiver is then to distribute the money to those entitled to it, as and when they become entitled to it, and in the meantime act as trustee of it in the same capacity as that in which the property agent was acting, and subject to the same obligations.

131. Receiver may require delivery of trust money and supply of information

- (1) A receiver of the trust money of a property agent may require the property agent or any other person who may have possession or control of the trust money –
 - (a) to deliver up to the receiver the trust money and any accounts and records in respect of the money that is in his or her possession or under his or her control; and
 - (b) to give to the receiver any other information in respect of the trust money that is in his or her possession or under his or her control.

- (2) A receiver who makes a requirement under subsection (1) must produce a copy of the order of the magistrate appointing the receiver.
- (3) A person must comply with a requirement of a receiver made in accordance with subsection (1).

Penalty: Fine not exceeding 500 penalty units.

132. Dealings with trust account

- (1) A receiver appointed in respect of the trust money of a property agent may serve on an authorised deposit-taking institution where the property agent maintains a trust account a notice, with a copy of the order of the magistrate appointing the receiver attached to it, that instructs the institution not to permit any withdrawal to be made from the trust account except by the receiver.
- (2) An authorised deposit-taking institution must comply with an instruction contained in a notice served on it in accordance with subsection (1).

Penalty: Fine not exceeding 500 penalty units.

133. Power to take proceedings to recover trust money

A receiver appointed in respect of the trust money of a property agent may take proceedings in his or her own name to recover the whole or any part of the trust money that has been stolen, embezzled, misappropriated or otherwise dealt with in breach of trust.

134. Magistrate may give directions, &c., to receiver

A magistrate may, on the application of a receiver appointed in respect of the trust money of a property agent, authorise the receiver to do such things as the magistrate thinks necessary to carry out the objects of this Division or the administration of the trust money, and may give directions accordingly.

135. Powers of manager

- (1) A manager appointed to manage the business of a property agent may do all acts and things in relation to that business that the property agent might lawfully have done.
- (2) The manager may, in particular, in his or her own name or in the name of the property agent –
 - (a) charge commission and other amounts for work undertaken for clients of the property agent in the course of the business of the property agent; and
 - (b) pay from the assets of the business any outgoings payable in connection with the business; and
 - (c) administer the trust account of the property agent and pay money from that account as and when people become entitled to it.

136. Obligations of manager

A manager appointed to manage the business of a property agent must, in the course of managing the business, perform all functions that the property agent would have been required to perform or carry out by this Act or any other Act, or by any agreement.

137. Magistrate may give directions, &c., to manager

A magistrate may, on the application of a manager appointed to manage the trust money of a property agent, authorise the manager to do such things as the magistrate thinks necessary or convenient to carry out the objects of this Division or to manage the business of the property agent, and may give directions accordingly.

138. Remuneration of receivers and managers

- (1) A receiver or manager appointed under this Division is to be paid by way of remuneration and in repayment of any cost incurred by him or her –
 - (a) such amount as is agreed with the Board;
or
 - (b) failing agreement, such amount as is determined by a magistrate on application by either the Board or the receiver or manager.

- (2) The amount agreed or determined in accordance with subsection (1) is to be paid by the Trust from the Guarantee Fund.
- (3) That amount may be recovered by the Trust from the property agent as a debt due to the Trust.

139. Receiver and manager to report to Board

- (1) A receiver or manager appointed under this Division is to report to the Board whenever required to do so by the Board.
- (2) A report must contain such information as the Board requires.

140. Termination, &c., of appointment of receiver or manager

- (1) This section applies where a receiver or manager has been appointed under this Division in respect of the trust money or business of a property agent.
- (2) The Board or the property agent may at any time apply to a magistrate for an order that –
 - (a) the appointment of the receiver or manager be terminated; or
 - (b) a different person, specified in the application, be appointed to be the receiver or manager.
- (3) The magistrate may make such an order.

*Division 2 – Professional indemnity insurance***141. Certain property agents to have professional indemnity insurance**

- (1) This section applies to –
 - (a) a real estate agent named in Part 1(1) of the Register; and
 - (b) a property manager named in Part 2(1) of the Register; and
 - (c) a general auctioneer named in Part 3 of the Register.

- (2) A property agent to whom this section applies must maintain insurance cover that indemnifies the property agent against any liability that the property agent may incur in respect of any loss or damage suffered by other people occasioned by any act, default, omission, neglect or criminal action by the property agent in the course of his or her business as a property agent.

Penalty: Fine not exceeding 500 penalty units.

- (3) The insurance must cover –
 - (a) claims by both clients and people who are not clients of the property agent; and
 - (b) claims arising from any act, default, omission, neglect or defalcation by the property agent and by any person employed or engaged by, or acting on behalf of, the property agent.
- (4) The insurance cover is to be provided by an insurance company approved by the Australian

Prudential Regulatory Authority for the provision of insurance in respect of the risks mentioned in this section.

- (5) A property agent to whom this section applies must, whenever required to do so by the Board, provide to the Board evidence in a form specified by the Board to show that the property agent has the insurance cover required by this section.

Penalty: Fine not exceeding 50 penalty units.

- (6) If the Board advises a property agent that the insurance cover maintained by the property agent is in its opinion insufficient to cover the liabilities mentioned in this section, the property agent must increase the cover to such amount as the Board may specify.

Penalty: Fine not exceeding 500 penalty units.

- (7) The Board may specify a minimum level of cover that a property agent to whom this section applies must maintain to comply with this section.

142. Suspension of registration when professional indemnity insurance not in force

- (1) The registration of a property agent is to be taken to have been suspended during any period when the property agent does not have the insurance cover required by this Division.
- (2) A property agent who is required to have the insurance cover required by this Division must, on each renewal of any policy of that insurance,

provide the Board with evidence, in a form specified by the Board, of that insurance.

Penalty: Fine not exceeding 50 penalty units.

- (3) The Board is to maintain a record of the information supplied to it in accordance with subsection (2) and take disciplinary action against any property agent that its records show does not have the insurance cover required by this Division.

PART 8 – TRUST MONEY, TRUST ACCOUNTS AND RECORDS

143. Trust money

(1) Money received by or on behalf of –

- (a) a real estate agent named in Part 1(1) of the Register; or
- (b) a property manager named in Part 2(1) of the Register; or
- (c) a general auctioneer named in Part 3 of the Register –

on behalf of a party to negotiations in which the property agent is involved, or money received by such a property agent as a stakeholder, is trust money while it is in the possession of, or under the control of, the property agent.

(2) Trust money is to be held by the property agent upon trust for the person entitled to it.

144. Trust money to be paid into trust account

(1) When –

- (a) a real estate agent named in Part 1(1) of the Register; or
- (b) a property manager named in Part 2(1) of the Register; or
- (c) a general auctioneer named in Part 3 of the Register; or

- (d) a person employed or engaged by any such property agent –

receives trust money, the property agent or person must, without delay, pay the money into a trust account maintained by the property agent.

Penalty: Fine not exceeding 500 penalty units.

- (2) It is a defence for a property agent or person charged with an offence of failing to comply with subsection (1) to show –
- (a) that all the parties to the transaction agreed that the property agent or person need not comply with the subsection; and
- (b) that the money was paid into a trust account in the joint names of those parties.
- (3) A person with a claim on money deposited in a trust account in accordance with subsection (1) has no right to any interest earned on the money.

145. “Trust account” defined

In this Act –

“**trust account**” means an account with the words “trust account” in its title that is kept with an approved institution in the name of a person who is or has been –

- (a) a real estate agent named in Part 1(1) of the Register; or
- (b) a property manager named in Part 2(1) of the Register; or

- (c) a general auctioneer named in Part 3 of the Register.

146. Accounts regulations

- (1) Regulations made under this Act may make provision as to –
 - (a) the opening and keeping of trust accounts; and
 - (b) the keeping of accounts and records relating to trust money; and
 - (c) the production of those accounts and records for inspection; and
 - (d) the auditing of those accounts; and
 - (e) the period of retention and subsequent disposal of those accounts.
- (2) As to the opening and keeping of trust accounts, the regulations may, in particular –
 - (a) require a property agent to furnish to the Board details of the name of any authorised deposit-taking institution at which, and the name in which, the property agent has opened a trust account; and
 - (b) specify the circumstances in which money other than trust money may be paid into a trust account; and
 - (c) specify the occasions on which, and the people to whom, money held in a trust account may be paid out; and

- (d) require a property agent to provide regular reports, at intervals specified by the regulations, containing prescribed particulars of the property agent's trust account.
- (3) As to the keeping of accounts and records relating to trust money, the regulations may, in particular –
- (a) specify where those accounts and records must be kept; and
 - (b) prescribe the particulars to be included in those accounts and records.
- (4) As to the production of accounts and records of trust money for inspection, the regulations may, in particular, provide for a person authorised for the purpose by the Board –
- (a) to enter, at reasonable times, any place where those accounts and records are kept, and to inspect and take copies of them; and
 - (b) to require a property agent to provide to the person details of all transactions entered into by the property agent in which the property agent received or paid out trust money during such period as that person may specify.
- (5) As to the auditing of accounts relating to trust money, the regulations may, in particular –
- (a) require such accounts to be drawn in respect of specified accounting periods, and to be audited by an auditor within a

specified time after the end of each such period; and

- (b) require the auditor to report to the Board whether, in the auditor's opinion, the requirements of this Act in respect of trust money and the keeping of trust accounts have been complied with, or have been substantially complied with; and
- (c) prescribe the matters to which such a report is to relate and the circumstances in which a report of substantial compliance may be given.

147. Records of transactions

- (1) The Board may approve the records to be kept of transactions undertaken by –
 - (a) real estate agents named in Part 1(1) of the Register; and
 - (b) property managers named in Part 2(1) of the Register; and
 - (c) general auctioneers named in Part 3 of the Register.
- (2) In approving the records referred to in subsection (1), the Board may, in particular –
 - (a) approve the manner of keeping records of transactions; and
 - (b) approve the matters to be included in the records; and

- (c) approve the information to be given to property agents, the persons required to give that information, and the manner in which and time within which it is to be given; and
- (d) approve the persons to whom those records are to be produced and the manner of their production; and
- (e) provide for a person authorised for the purpose by the Board to enter, at reasonable times, any place where those records are kept, and to inspect and take copies of them; and
- (f) approve the period during which the records are to be retained; and
- (g) provide for the disposal of those records when a person ceases to carry on business as a property agent.

148. Inspection of records of authorised deposit-taking institutions, &c.

- (1) The Board may serve a written notice, on any authorised deposit-taking institution where accounts may be kept, requiring the institution before a date specified in the notice –
 - (a) to notify the Board whether an account that contains or contained trust money is, or has been, kept at the institution by a property agent or former property agent; and

- (b) to send or deliver to the Board a written statement of any particulars relating to any account that contains or contained trust money that is, or has been, kept at the institution; and
 - (c) to produce, for inspection by a person authorised for the purpose by the Board, a document or record in the possession of, or under the control of, the institution relating to any account that contains or contained trust money that is, or has been kept, at the institution; and
 - (d) to allow a person authorised for the purpose by the Board to take a copy of any document or record in the possession of, or under the control of, the institution relating to any account that contains or contained trust money that is, or has been, kept at the institution, or, if so required by that person, to provide that person with a copy of any such document or record.
- (2) An authorised deposit-taking institution must comply with a notice served on it under subsection (1).

Penalty: Fine not exceeding 500 penalty units.

**PART 9 – PROPERTY AGENTS TRUST AND
GUARANTEE FUND**

Division 1 – Property Agents Trust

149. Property Agents Trust

- (1) The body corporate that was immediately before the commencement of this section in existence by virtue of section 76(1) of the repealed Act under the name Auctioneers and Real Estate Agents Trust continues in existence by force of this subsection as a body corporate, under and subject to the provisions of this Act, under the name the Property Agents Trust.
- (2) The Trust may have a seal and may sue and be sued in its corporate name.
- (3) If the Trust has a seal –
 - (a) it is to be kept and used as authorised by the Board; and
 - (b) all courts or persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that the document was duly sealed by the Trust.

150. Constitution of Trust

- (1) The Trust consists of –
 - (a) the Chair of the Board, who is also Chair of the Trust; and

- (b) two other members appointed by the Governor, one of whom is to be a representative of property agents, and the other being a person with wide knowledge of financial matters.
- (2) A person appointed to be a member of the Trust holds office for 3 years.
- (3) If the office of an appointed member of the Trust becomes vacant before the end of the member's term of office, the Governor may appoint a person to hold office for the unexpired part of that term.
- (4) An appointed member of the Trust is eligible for reappointment.
- (5) The performance of a function of the Trust is not affected –
 - (a) by a vacancy or vacancies in the membership of the Trust; or
 - (b) by a defect or irregularity in the appointment of a member of the Trust.
- (6) A person may accept appointment as a member of the Trust and any remuneration payable to a member despite the fact that the person is the holder of an office under an Act that requires the holder of the office to devote the whole of his or her time to the duties of the office.
- (7) The *State Service Act 2000* does not apply in relation to a member of the Trust in his or her capacity as a member of the Trust.

151. Fees and allowances of Trust members

- (1) The Trust is to pay its members such fees, allowances and expenses, and at such rates, as the Governor determines.
- (2) Although a person may be a member of the Trust in conjunction with State Service employment, a member who is a State Service officer or State Service employee is not entitled to any remuneration or allowances as a member of the Trust unless the Minister administering the *State Service Act 2000* decides otherwise.

152. Removal of Trust member from office

The Governor may terminate the appointment of an appointed member of the Trust for inability, inefficiency, misbehaviour or physical or mental incapacity.

153. Vacation of office of Trust members

The Governor must terminate the appointment of an appointed member of the Trust if the member –

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for their benefit; or
- (b) is absent, except on leave of absence granted by the Trust, from 3 consecutive meetings of the Trust; or

- (c) is convicted of an offence, in Tasmania or elsewhere, of such a nature that, in the opinion of the Governor, it is inappropriate for the member to remain a member of the Trust; or
- (d) fails, without reasonable excuse, to comply with an obligation to disclose an interest.

154. Resignation by Trust members

An appointed member of the Trust may resign from office by giving the Governor written notice of resignation.

155. Meetings of Trust

(1) The Chair of the Trust –

- (a) must convene such meetings of the Trust as the Chair considers necessary for the efficient performance of the functions of the Trust; and
- (b) must convene a meeting of the Trust on receipt of a written request to do so signed by at least one other member of the Trust.

(2) At a meeting of the Trust –

- (a) the Chair of the Trust, if present, presides, but if the Chair is absent the members present and voting are to elect one of their number to preside, and that person is to exercise the powers and

perform the duties of the Chair for that meeting; and

- (b) two members constitute a quorum; and
 - (c) the member presiding only has a deliberative vote so that, if there is an equality of votes on a matter, the matter stands adjourned to the next meeting of the Trust at which all 3 members of the Trust are present, unless a member of the Trust is excluded by virtue of section 156, when the member presiding has both a deliberative vote and a casting vote.
- (3) The Trust must keep a record of its proceedings.
 - (4) Except as provided by this Act, the Trust may determine its own procedure.

156. Trust member not to act in certain circumstances

- (1) A member of the Trust with a direct or indirect pecuniary interest in a matter being, or about to be, considered by the Trust must, as soon as practicable after the relevant facts are known by the member, disclose the nature of the interest at a meeting of the Trust.
- (2) The disclosure must be recorded in the minutes of the meeting of the Trust.
- (3) A member of the Trust who has made a disclosure in respect of a matter is not to –
 - (a) be present during any deliberation of the matter by the Trust; or

- (b) take part in any decision of the Trust with respect to the matter.
- (4) It is not necessary to disclose an interest in a matter that applies or will apply in respect of property agents or a particular group of property agents generally.

157. Functions of Trust

The functions of the Trust are –

- (a) to establish and maintain, from money it receives under schemes of arrangement, a fund to meet claims for loss suffered by people as a result of certain acts and omissions of real estate agents named in Part 1(1) of the Register, property managers named in Part 2(1) of the Register or general auctioneers named in Part 3 of the Register, their directors and people employed or engaged by them, or acting on their behalf; and
- (b) to administer the fund so established; and
- (c) to pay any compensation determined in accordance with Division 5 of this Part to be payable from the fund.

158. General powers of Trust

Subject to this Act, the Trust has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

159. Administrative accounts of Trust

- (1) Money received by the Trust in accordance with section 163(2) is to be paid into its general fund.
- (2) Money in the general fund of the Trust is to be used to pay –
 - (a) the fees, allowances and expenses of members of the Trust; and
 - (b) the remuneration of people engaged by the Trust; and
 - (c) other administrative expenses of the Trust, including auditors' fees.
- (3) The Trust may invest money in its general fund in any manner in which a trustee is authorised by law to invest trust funds.
- (4) A payment is not to be made from the general fund of the Trust except in accordance with an order of the Trust.
- (5) An order may relate to a single payment, several payments or a series of payments.

160. Protection of Trust members

An action does not lie against a member of the Trust, or an officer of the Trust acting as such, for anything done in good faith.

*Division 2 – Schemes of arrangement***161. Board may enter into schemes of arrangement**

- (1) The Board may enter into a scheme of arrangement with an authorised deposit-taking institution for the keeping of trust accounts.
- (2) An authorised deposit-taking institution that is party to a scheme of arrangement is taken to be an approved institution for the purposes of this Act.
- (3) A scheme of arrangement may provide for all or any of the following:
 - (a) the payment to the Trust of interest on money held in trust accounts;
 - (b) the disclosure to the Board of trust account balances and other information about trust accounts;
 - (c) the auditing of trust accounts;
 - (d) any other matter related to the keeping of trust accounts that the Board considers to be necessary or expedient for the purposes of this Part.
- (4) A scheme of arrangement –
 - (a) is to be in writing; and
 - (b) is not to contain terms that are inconsistent with this Act; and
 - (c) is not to contain terms that discriminate against another approved institution; and

(d) may be varied or terminated in accordance with its terms or as may be prescribed.

(5) The Board must –

(a) from time to time, notify real estate agents named in Part 1(1) of the Register, property managers named in Part 2(1) of the Register and general auctioneers named in Part 3 of the Register of the authorised deposit-taking institutions that are approved institutions; and

(b) notify such property agents as soon as practicable if an authorised deposit-taking institution ceases to be an approved institution.

162. Trust accounts to be kept only with approved institutions

A real estate agent named in Part 1(1) of the Register, a property manager named in Part 2(1) of the Register and a general auctioneer named in Part 3 of the Register must not maintain a trust account with an authorised deposit-taking institution that is not an approved institution.

Penalty: Fine not exceeding 1 000 penalty units.

Division 3 – Property Agents Guarantee Fund**163. Property Agents Guarantee Fund**

- (1) The Trust must continue to maintain the fund that was, immediately before the commencement of this section, in existence by virtue of section 86(1) of the repealed Act under the name Auctioneers and Real Estate Agents Guarantee Fund, which fund continues in existence by force of this subsection, subject to the provisions of this Act, under the name Property Agents Guarantee Fund.
- (2) The Trust is to pay into the Guarantee Fund the balance of all money received by it under a scheme of arrangement, under the *Conveyancing Act 2004*, or from any other source after it has paid to itself any amount required –
 - (a) to pay the fees, allowances and expenses of members of the Trust; and
 - (b) to pay the remuneration of persons engaged by the Trust; and
 - (c) to pay the administrative expenses of the Trust, including auditors' fees.

164. Level of Guarantee Fund

Subject to the payment of any demands on the Guarantee Fund in accordance with this Act or the *Conveyancing Act 2004*, the Trust must build up and maintain the Fund at such amount, exceeding \$3,000,000, as the Minister and the

Trust may agree, or failing agreement, as the Minister determines.

165. Administration of Guarantee Fund

- (1) The Trust is to keep money in the Guarantee Fund invested in any manner in which a trustee is authorised by law to invest funds.
- (2) The Trust may also keep the money in any manner approved by the Treasurer.
- (3) Income of the Fund is to be added to the Fund.

166. Use of surplus money in Guarantee Fund

- (1) Any surplus money in the Guarantee Fund above the amount agreed or determined under section 164 is to be distributed, as agreed by the Board and the Minister –
 - (a) firstly, in payment of costs incurred in administering the *Residential Tenancy Act 1997*; and
 - (b) secondly, to the Board to be used by it in accordance with subsection (2); and
 - (c) thirdly, in the payment of costs incurred in administering the *Conveyancing Act 2004*.
- (2) The Board may use the money mentioned in subsection (1)(b) for all or any of the following purposes:

- (a) to pay the cost of research relating to the property agents industry;
- (b) to pay the cost of educating property agents and people engaged or to be engaged in the property agents industry;
- (c) for any other purpose approved by the Minister.

Division 4 – Audit and report

167. Accounts and report

- (1) Regulations made under this Act may make provision as to –
 - (a) the keeping of accounts and records by the Trust relating to money handled by the Trust; and
 - (b) the auditing of those accounts.
- (2) As to the auditing of accounts, the regulations may, in particular –
 - (a) require such accounts to be drawn in respect of specified accounting periods, and to be audited by an auditor within a specified time after the end of each such period; and
 - (b) require the auditor to report to the Board and the Minister whether in the auditor's opinion the requirements of this Act in respect of the handling of money by the Trust have been complied with or have been substantially complied with; and

- (c) prescribe the matters to which such a report is to relate, and the circumstances in which a report of substantial compliance may be given.

Division 5 – Claims against Guarantee Fund

168. Right to claim compensation

- (1) A person may apply to the Board for compensation for pecuniary loss or loss of property suffered by the person arising from the criminal or fraudulent conduct of –
 - (a) a real estate agent named in Part 1(1) of the Register; or
 - (b) a property manager named in Part 2(1) of the Register; or
 - (c) a general auctioneer named in Part 3 of the Register; or
 - (d) a person mentioned in subsection (3) acting in the course of the business of any such property agent.
- (2) A person may, on giving notice to the Director of Consumer Affairs and Fair Trading, apply to the Council for compensation for –
 - (a) pecuniary loss; or
 - (b) loss of property –suffered by that person arising from the criminal or fraudulent conduct of a conveyancer in the course of the conveyancer's business.

- (3) A person referred to in subsection (1)(d) is –
 - (a) a person employed or engaged by a property agent mentioned in subsection (1); or
 - (b) a director or person holding a similar position in such a property agent that is a company.
- (4) The loss in respect of which compensation may be claimed is the loss, in money terms, suffered by the applicant less any amount, or the value of any property, that the applicant has recovered from any person in respect of the loss.

169. Board may invite claims

- (1) The Board may, by notice published in such manner as the Board considers will best bring it to the attention of those affected by it, invite any person who may be entitled to compensation in respect of loss suffered as a result of the conduct of a person referred to in section 168, and specified in the notice, to make an application to the Board for compensation within the period specified in the notice.
- (2) The period specified in the notice is to be no sooner than 3 months from the date of the first publication of the notice.
- (3) An action for damages does not lie against the Board or any other person in respect of the publication in good faith of a notice under this section.

170. Manner and time for making application for compensation

- (1) The Board is not to act on an application made to it under section 168 unless the application is in writing and is made within the period of 6 months after the applicant became aware of the criminal or fraudulent conduct.
- (2) However, the Board must act on an application made under section 168 if a notice has been published in accordance with section 169, and the application is made before the end of the period specified in the notice.
- (3) The Board may extend the period mentioned in subsection (1) or (2) if it is satisfied that the circumstances of the case justify doing so.

171. Applicant for compensation to provide details of claim

An application to the Board for compensation under section 168 is to be accompanied by –

- (a) full particulars, in writing, of the claim; and
- (b) a statutory declaration supporting the claim.

172. Board may seek further particulars

- (1) The Board may require a person who has applied for compensation to supply to the Board information in the possession of, or under the

control of, the applicant with regard to any matter relating to the application.

- (2) The Board may also require the person to deliver to the Board any document in his or her possession or under his or her control that tends to establish the facts of the conduct or the amount of the loss to which the application relates.
- (3) The Board may retain a document delivered to it under this section for so long as it considers necessary for the purposes of this Division.
- (4) However, the Board must, if required to do so by the person who produced the document, supply the person with a copy of the document certified to be a true copy by the Chair of the Board or by an officer of the Board authorised for the purpose.
- (5) A copy of the document certified in accordance with subsection (4) is to be received in all courts and by any person or body authorised to receive evidence as if it were an original document.
- (6) If the Board has made a requirement under this section, it need take no further action in relation to the application until the requirement is met.

173. Board to consider application

- (1) The Board must, after considering an application for compensation made under section 168 –
 - (a) determine whether or not there has been a loss for which compensation may be paid under this Division; and

- (b) if it determines that there has been such a loss, recommend to the Trust the amount of compensation payable.
- (2) Subsection (1)(a) does not require the Board to be satisfied –
 - (a) that any person has been convicted of an offence arising out of the conduct giving rise to the application; or
 - (b) that there is evidence upon which a person might be convicted of such an offence.
- (3) If, after considering an application, the Board determines that no compensation may be paid under this Division, it must serve a written notice of the Board's determination on the applicant.
- (4) A notice served under subsection (3) must –
 - (a) give reasons for the Board's determination; and
 - (b) include details of the facts that in the Board's opinion justify the determination.
- (5) The notice must also inform the applicant –
 - (a) of the applicant's right to apply for a review of the Board's determination; and
 - (b) of the period in which an application for a review may be made and how, and to whom, notice of the review may be given.

174. Recovery of claims under professional indemnity insurance

- (1) Subject to subsection (2), the Board may, before making a determination under section 173(1), require the applicant to institute proceedings to recover any sum under professional indemnity insurance.
- (2) If the Board requires the applicant to institute proceedings, the Trust –
 - (a) may take such action as it considers appropriate to aid the applicant; and
 - (b) must pay out of the Guarantee Fund the costs and other expenses necessarily incurred by the applicant in instituting the proceedings and not otherwise recoverable.

175. Trust to determine compensation payable

The Trust must consider a recommendation made to it by the Board under section 173(1)(b) and must determine the amount of the compensation to be paid to the claimant.

176. Notice of determination

- (1) As soon as practicable after the Trust has made a determination under section 175, it must serve a written notice on the applicant stating the amount of compensation that the Trust has determined may be paid to the applicant under this Division.

- (2) The notice must –
 - (a) give reasons for the Trust's determination; and
 - (b) include details of the facts which in the Trust's opinion justify that determination.
- (3) The notice must also inform the applicant –
 - (a) of the applicant's right to apply for a review of the Trust's determination on the amount of the compensation; and
 - (b) of the period within which an application for a review may be made and how, and to whom, notice of the review may be given.

177. Reviews

- (1) This section applies where an applicant for compensation under this Division is aggrieved by –
 - (a) a determination of the Board that no compensation is payable under this Division; or
 - (b) a determination of the Trust on the amount of compensation payable under this Division.
- (2) The applicant may apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination.
- (3) In the proceeding –

- (a) the Board is a party if the review is in respect of a determination under section 173(3); and
- (b) the Trust is a party if the review is in respect of a determination under section 175.

178. Payment of compensation

- (1) If it is determined or directed that compensation is payable under this Division, the Trust is to pay from the Guarantee Fund to the applicant an amount equal to the amount so determined or directed.
- (2) If the aggregate of the amounts that the Trust would, but for this subsection, be required by subsection (1) to pay to applicants for compensation in respect of conduct by the same person exceeds the amount available in the Guarantee Fund, the Trust must divide the amount available among those applicants in proportion to the amounts that would otherwise be payable to them.
- (3) Any amount payable under this section is to be paid –
 - (a) within 28 days after notice of the Trust's determination is served on the applicant in accordance with section 176(1); or
 - (b) if the applicant applies for a review under section 177(2), on the determination of the review.

179. Subrogation

If the Trust has paid compensation to a person under this Division, the Trust is, to the extent of the payment, subrogated to the rights of the person against any other person in relation to the occurrence that gave rise to the claim for compensation.

180. Certain property agents may not claim

- (1) This section applies to –
 - (a) a real estate agent named in Part 1(1) of the Register; and
 - (b) a property manager named in Part 2(1) of the Register; and
 - (c) a general auctioneer named in Part 3 of the Register.
- (2) A property agent to whom this section applies is not entitled to claim compensation under this Division arising from the criminal or fraudulent conduct of –
 - (a) a person employed or engaged by the property agent; or
 - (b) if the property agent is a company, a director or a person in a similar position, the property agent; or
 - (c) if the property agent is a partnership, a partner in the partnership.

PART 10 – LAND TRANSACTIONS

Division 1 – Preliminary

181. Interpretation of Part 10

In this Part, unless the contrary intention appears –

“authorised officer” means an authorized officer within the meaning of the *Consumer Affairs Act 1988*;

“business day” means any day except a Saturday or Sunday or a day that is a public or bank holiday in the locality of any relevant land;

“Director” means the Director of Consumer Affairs and Fair Trading;

“purchaser” includes a lessee and mortgagee, and a prospective purchaser, lessee and mortgagee, and a grantee or prospective grantee of an option and any other person who for valuable consideration takes or deals in any land;

“relevant disclosure documents” means the relevant disclosure documents referred to in section 189;

“residential agency agreement” means an agreement between a real estate agent and the owner of residential property under which the real estate agent agrees, as agent for the owner, to induce or attempt to induce, or negotiate with a

view to inducing, any person to do all or any of the following:

- (a) acquire the residential property;
- (b) make an offer to acquire the residential property;
- (c) enter into a contract to acquire the residential property;

“residential property” means property intended primarily for occupation as a place of residence but does not include –

- (a) property that is intended only for rental; or
- (b) property of a class prescribed in the regulations for the purposes of this definition;

“vendor” includes a lessor and mortgagor, and a prospective vendor, lessor and mortgagor, and a grantor or prospective grantor of an option and any other person who for valuable consideration makes a disposition of any land.

182. Application of Part

This Part does not affect the operation of the *Conveyancing and Law of Property Act 1884*.

183. Crown to be bound

This Part binds the Crown not only in right of Tasmania but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Division 2 – Disclosure of information by vendors of land**184. Application of Division**

This Division applies to all sales of land unless, during the period of 6 months before the commencement of this section –

- (a) the land has been offered for sale; or
- (b) a residential agency agreement has been made in respect of the land.

185. Vendors to provide relevant disclosure documents

- (1) When offering land for sale, a vendor or any agent of the vendor must ensure that the relevant disclosure documents are available to a purchaser in one or more of the following ways:
 - (a) during business hours at one or more of the following places:
 - (i) an address nominated by the vendor as his or her residential address;
 - (ii) an address nominated by the vendor as his or her business address;

- (iii) the office of the vendor's agent;
- (b) in an electronic format that enables the information to be printed and saved to an electronic file;
- (c) by post at the request of the purchaser;
- (d) by electronic mail at the request of the purchaser.

Penalty: Fine not exceeding 50 penalty units.

- (2) A vendor or any agent of the vendor must give the relevant documents to the purchaser when requested by the purchaser to do so.

Penalty: Fine not exceeding 50 penalty units.

- (3) For the purposes of this section, a reference to offering land for sale includes a reference to showing, or in any way exhibiting, land to a purchaser.

186. Location of disclosure documents to be contained in advertisements

- (1) A real estate agent who advertises property in any written advertisement or on any website must ensure that the advertisement contains a statement advising a purchaser of the means by which the disclosure documents required by section 181 may be obtained.

Penalty: Fine not exceeding 500 penalty units

- (2) If an advertisement contains more than one property for sale and the disclosure documents in respect of each property can be obtained from

the same location or in the same manner, it is sufficient compliance with subsection (1) if the statement referred to in that subsection is contained once in that advertisement.

187. Vendors to provide relevant disclosure documents before public auction

In the case of a sale by public auction, in addition to the requirements under section 185, the vendor or property agent must make the relevant disclosure documents available to a purchaser, at the place at which the auction is to be conducted, at least 30 minutes before the commencement of the auction.

Penalty: Fine not exceeding 50 penalty units.

188. Contract voidable if relevant disclosure documents not provided

- (1) If a vendor enters into a contract for sale in respect of land and the relevant disclosure documents were not provided in accordance with either section 185 or 187, the purchaser may at any time before settlement rescind the contract without penalty.
- (2) A purchaser may rescind a contract in accordance with this section notwithstanding that an offence has been committed under section 185 or 187.
- (3) A purchaser may rescind the contract by serving written notice at any time before completion of

the contract stating that the purchaser is rescinding the contract.

- (4) The notice must be served on –
 - (a) the vendor or the vendor's solicitor; or
 - (b) if there is more than one vendor, any one of the vendors or the solicitor of any one of them; or
 - (c) the agent of the vendor or vendors.
- (5) The notice must be signed by –
 - (a) the purchaser or the purchaser's solicitor; or
 - (b) if there is more than one purchaser, each of the purchasers or each of their respective solicitors.
- (6) Service of a notice under this section is to be effected –
 - (a) in accordance with any provision of the contract; or
 - (b) at the address of the vendor shown in the contract; or
 - (c) by facsimile transmission to the vendor; or
 - (d) by other prescribed means.

189. Relevant disclosure documents

For the purposes of this Part, the relevant disclosure documents include –

- (a) a copy of the proposed contract incorporating a warning notice completed in accordance with section 191; and
- (b) in the case of land that is subject to the *Land Titles Act 1980*, a copy of the relevant folio of the Register kept by the Recorder of Titles under that Act; and
- (c) in the case of land that is subject to the *Land Titles Act 1980*, if the relevant folio of that Register refers to a plan, a copy of that plan; and
- (d) a copy of any certificate relating to the land issued under section 132 or 337 of the *Local Government Act 1993*; and
- (e) where the land is included in a strata scheme under the *Strata Titles Act 1998* –
 - (i) a statement that the land is part of a strata scheme and that the use of the land is subject to by-laws made under Part 7 of that Act and other requirements under that Act; and
 - (ii) the name of the strata scheme; and
 - (iii) the name and contact details of the secretary or manager of the body corporate or, if no such person exists, a statement to that effect; and

- (iv) a copy of any by-laws under that Act that are applicable to the land; and
 - (v) a certificate under section 83(5) of that Act; and
 - (vi) copies of public liability and building insurance policies taken out by the body corporate, including certificates of currency; and
 - (vii) a statement of any expenditure or liability that the body corporate has incurred or resolved to incur and the liability of the owner of the lot or a statement that there is no such expenditure or liability; and
 - (viii) details of the body corporate sinking fund or a statement that no such fund exists; and
- (f) a vendor statement completed in accordance with section 190; and
 - (g) any other prescribed documents.

190. Vendor statements

- (1) A vendor statement required under section 189 –
 - (a) is to contain the prescribed information; and
 - (b) is to be signed by the vendor and a witness.

- (2) A vendor statement is not valid if witnessed by any property agent.

191. Warning notices

- (1) A warning notice required under section 189 must contain the prescribed information and must appear on the first page of a contract for the sale of land.
- (2) Both the vendor and purchaser must, on entering into the contract, sign the notice certifying that they are aware of and accept their rights and obligations under this Division.

192. Validity of relevant disclosure documents

If the relevant disclosure documents have been obtained more than 6 months earlier than the date on which they are given to a purchaser, they are not valid for any purpose of this Division.

193. Variation of disclosure information

- (1) The relevant disclosure documents must be accurate as at the date of service on the purchaser.
- (2) If, in the period between –
 - (a) the relevant disclosure documents being provided to a purchaser and the purchaser signing the contract; or
 - (b) the signing of the contract and the completion of the contract –

circumstances change with the effect that there is a material change in the particulars contained in the relevant disclosure documents, the vendor must provide the purchaser with written notification of the details of the change within 5 days or before completion of the contract, whichever first occurs.

Penalty: Fine not exceeding 50 penalty units.

- (3) It is a defence if the person charged with an offence under subsection (2) establishes that he or she was not aware at the relevant time that the change in circumstances had occurred.

194. Offence to provide false, inaccurate or misleading information

A vendor or agent of a vendor who knowingly or recklessly –

- (a) supplies false, inaccurate or misleading information to the purchaser in the relevant disclosure documents; or
- (b) fails to supply all the information required to be supplied in the relevant disclosure documents –

is guilty of an offence.

Penalty: Fine not exceeding 50 penalty units.

195. Liability of agent

- (1) In addition to any disclosure of information required of a vendor under this Part, an agent of

the vendor must disclose to a prospective purchaser any information that the agent knows or ought reasonably to know is likely to affect the purchaser's decision to purchase the land.

Penalty: Fine not exceeding 500 penalty units.

- (2) An agent of a vendor is liable for any loss or damage arising from a failure to disclose to a purchaser any information which the agent knew or ought reasonably to have known was likely to affect the purchaser's decision to purchase the land.

196. Certain conditions to be implied in contract

- (1) A contract for the sale of land is subject to the following terms whether or not they are stated in the contract:
 - (a) that the land is sold free of encumbrances other than encumbrances listed in the vendor's statement or, in the case of land that is subject to the *Land Titles Act 1980*, shown on the folio of the Register kept by the Recorder of Titles under that Act;
 - (b) that the vendor will, at the due time of completion, be able to complete the contract;
 - (c) that the information provided in the relevant disclosure documents required under section 189 is correct.
- (2) If, before completion of the contract, the purchaser becomes aware of a breach of any

condition to which the contract is subject and the loss arising from the breach exceeds more than 5% or such other percentage as may be prescribed of the value of the relevant land, the purchaser may rescind the contract or complete the contract and claim damages from the vendor.

- (3) Any loss arising from a breach of any condition to which the contract is subject may be recovered by the purchaser from the vendor in a court of competent jurisdiction.
- (4) Where there is a dispute as to whether or not a purchaser may exercise a right to rescind a contract under subsection (2), the Director may appoint a person who is qualified as a land valuer under section 4 of the *Land Valuers Act 2001* to determine whether or not a purchaser may exercise such a right and the valuer's determination is binding on all parties to the dispute.
- (5) A land valuer appointed under subsection (4) is to determine whether, for the purposes of subsection (2), the loss arising from the breach of a condition of the contract exceeds 5% or such other percentage as may be prescribed of the value of the relevant land.
- (6) The vendor and purchaser are to pay in equal shares the cost incurred by a land valuer appointed under subsection (4).

197. Defences

A purchaser may not rescind a contract if a court is satisfied that –

- (a) the vendor has acted honestly and ought fairly to be excused for the contravention; and
- (b) the purchaser is substantially in as good a position as if all the relevant provisions of this Division had been complied with.

198. Purchaser's rights in respect of information provided by third parties

Where a vendor is required under this Division to provide to a purchaser a document obtained from a State Service Agency or a council, the purchaser may exercise, in respect of the document, the rights, powers and immunities that the purchaser would have had if the document had been issued to the purchaser.

Division 3 – Cooling-off periods – residential property

199. Cooling-off period

- (1) Subject to subsections (5), (7) and (8), there is a cooling-off period for –
 - (a) a contract for the sale of residential property; or
 - (b) a residential agency agreement.
- (2) During the cooling-off period –
 - (a) the purchaser, in the case of a contract for the sale of residential property; or

- (b) the vendor, in the case of a residential agency agreement –
- may rescind the contract or agreement by exercising the right to do so given by section 202 or 203.
- (3) In the case of a contract for the sale of residential property, the cooling-off period starts on the day on which the purchaser becomes bound by the contract and, subject to subsection (5), expires at 5 p.m. on the second business day after that day.
- (4) In the case of a residential agency agreement, the cooling-off period starts on the day on which the agreement is made and expires at 5 p.m. on the next business day.
- (5) In the case of a contract for the sale of residential property, the cooling-off period expires if the purchaser enters into any other agreement to purchase residential property, in which case –
- (a) there is no cooling-off period in respect of the second or subsequent contracts for the sale of residential property; and
- (b) the purchaser must disclose the circumstances to all vendors and to any real estate agents acting for them.
- (6) A person who suffers any loss as a result of a purchaser failing to comply with subsection (5)(b) has a right of action against that purchaser to recover that loss.
- (7) There is no cooling-off period in respect of a contract for the sale of residential property –

- (a) if the contract is made following a public auction; or
 - (b) if the contract is made during the 3 days immediately before the day on which a public auction of the residential property was due to be held; or
 - (c) if a public auction of the residential property is held but the property is not sold and the contract is made during the 3 days immediately following the public auction.
- (8) There is no cooling-off period in respect of a residential agency agreement if the parties have previously entered into a residential agency agreement in respect of the residential property concerned and in substantially the same terms.

200. Contracts to contain statement of cooling-off rights and other prescribed information

- (1) Except where section 199(5) or (7) applies, a vendor of residential property must ensure that, in the document incorporating the terms of the contract for the sale of the residential property, there is set out the following statement:

“THIS CONTRACT IS SUBJECT TO A
COOLING-OFF PERIOD OF 2 BUSINESS
DAYS”

Penalty: Fine not exceeding 50 penalty units.

- (2) Except where section 199(8) applies, a real estate agent must ensure that, in any residential agency agreement that the agent enters into,

there is set out in the agreement the following statement:

“THIS AGREEMENT IS SUBJECT TO A COOLING-OFF PERIOD OF ONE BUSINESS DAY”

Penalty: Fine not exceeding 50 penalty units.

- (3) A statement under this section is to be printed in upper case in type not smaller than 18 point and is to appear immediately above the place in the contract or residential agency agreement where the parties sign it.

201. Real estate agent may not receive consideration where cooling-off right exercised

- (1) A contract for the sale of residential property or a residential agency agreement must not provide for the real estate agent to receive any valuable consideration as a consequence of a vendor or purchaser exercising a cooling-off right under this Division.
- (2) A real estate agent must not demand any valuable consideration in contravention of subsection (1).

Penalty: Fine not exceeding 500 penalty units.

- (3) Any valuable consideration received by a real estate agent in contravention of subsection (1) is recoverable from the agent as a debt in any court of competent jurisdiction by the purchaser or the vendor, as the case may require.

202. Right to rescind contract for sale of residential property – cooling-off rights

- (1) The purchaser under a contract for the sale of residential property may rescind the contract by serving written notice at any time during the cooling-off period stating that the purchaser is rescinding the contract.
- (2) The notice must be served on –
 - (a) the vendor or the vendor's solicitor; or
 - (b) if there is more than one vendor, any one of the vendors or the solicitor for any one of them; or
 - (c) the agent of the vendor or vendors.
- (3) The notice must be signed by –
 - (a) the purchaser or the purchaser's solicitor; or
 - (b) if there is more than one purchaser, each of the purchasers or each of their respective solicitors.
- (4) A vendor is entitled to payment of a prescribed fee if the purchaser exercises his or her right to rescind a contract under this section, and the fee is recoverable from the purchaser in a court of competent jurisdiction as a debt due to the vendor.
- (5) Service of a notice under this section is to be effected –
 - (a) in accordance with any provision of the contract; or

- (b) at the address of the vendor shown in the contract; or
- (c) by facsimile transmission to the vendor; or
- (d) by other prescribed means.

203. Right to rescind residential agency agreement – cooling-off rights

- (1) A vendor of residential property who is a party to a residential agency agreement in respect of the property may rescind the agreement at any time during the cooling-off period by serving a written notice signed by the vendor or the vendor's solicitor on the real estate agent stating that the vendor is rescinding the agreement.
- (2) The notice is of no effect if, at the time it is served, the vendor has entered into a contract for the sale of the property that is the subject of the residential agency agreement.
- (3) Service of a notice under this section is to be effected –
 - (a) in accordance with any provision of the agreement; or
 - (b) at the address of the real estate agent shown in the agreement; or
 - (c) by facsimile transmission to the real estate agent; or
 - (d) by other prescribed means.

- (4) A rescission under this section does not prevent a real estate agent from recovering from the vendor any amount payable under the residential agency agreement in respect of anything done before the rescission.

204. Waiver of rights under this Division

- (1) This section applies if –
 - (a) in the case of a contract for the sale of residential property, the purchaser of the property has delivered a waiver to the vendor or to the vendor's property agent after entering into the contract; or
 - (b) in the case of a residential agency agreement with a real estate agent, the person proposing to enter into the agreement has delivered a waiver to the agent after entering into the agreement.
- (2) This section applies to contracts, whether made before or after the commencement of this section, and does not affect the law relating to past performance or a sale by the Supreme Court.
- (3) Where this section applies, this Division does not apply in respect of the contract or agreement mentioned in subsection (1).
- (4) A waiver has no effect for the purpose of this section unless –
 - (a) it is in writing signed by the person giving the waiver; and

- (b) it states that the person giving the waiver has received independent advice on the effect of giving the waiver; and
- (c) it states unequivocally that the person giving the waiver waives the rights that he or she would otherwise have had under this Division to rescind the contract or agreement mentioned in subsection (1).

Division 4 – Supplemental

205. Contracts, &c., to avoid requirements of this Part void

If a contract for the sale of land or a residential agency agreement made or entered into, orally or in writing, has, or purports to have, the purpose or effect of defeating or avoiding the requirements of this Part, the contract or agreement is void.

206. Responsibilities of purchaser

Nothing in this Part relieves a purchaser of the duty to exercise reasonable care to protect himself or herself, having regard to any facts which are known to him or her or reasonably within his or her knowledge.

207. Prosecutions

A prosecution for an offence against this Part –

- (a) may, with the consent of the Director, be instituted by an authorised officer; and
- (b) must be commenced within –
 - (i) 2 years after the time when the matter of complaint arose; and
 - (ii) 6 months after the time when the matter of complaint came to the attention of the Director.

PART 11 – MISCELLANEOUS PROVISIONS**208. Obstruction**

A person must not obstruct, threaten or intimidate a person in the exercise of a function conferred or imposed on the person by this Act.

Penalty: Fine not exceeding 1 000 penalty units.

209. Liability of directors, &c.

If an offence under this Act is committed by a company, each person who is, at the time of the commission of the offence, a director, manager, secretary or other similar officer of the company or who is acting or purporting to act as such is guilty of that offence unless that person proves that –

- (a) the offence was committed without his or her consent; and
- (b) he or she exercised such diligence to prevent the commission of the offence as he or she ought to have exercised having regard to the nature of his or her functions in that capacity and the circumstances in which the offence was committed.

210. Service of documents

- (1) Except where otherwise provided in this Act, a document required by this Act to be given to, served on or sent to, a property agent may be so given, served or sent by –
 - (a) giving it to the property agent personally; or
 - (b) posting it to the address of the place specified in the Register as the place where the business of the property agent is carried on, or where the property agent is employed, or by leaving it at that place.
- (2) Except where otherwise provided in this Act, a document required by this Act to be given to, served on or sent to a person who is not a property agent may be so given, served or sent by –
 - (a) giving it to that person personally; or
 - (b) posting it to the last-known place of residence or place of business of that person, or by leaving it at that place.

211. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
 - (a) provide for –

- (i) the fees to be paid to the Board for registration; and
 - (ii) the conduct of examinations by the Board for the purposes of this Act, and the payment to the Board of fees by candidates at any such examinations; and
 - (iii) the fees to be paid to the Board on the production to the Board of audited accounts and records of trust money; and
 - (iv) codes of conduct to be observed by property agents; and
 - (v) penalties not exceeding 500 penalty units for an offence under the regulations; and
- (b) exempt –
- (i) a specified vendor or specified class of vendors from the application of Division 3 of Part 10; or
 - (ii) specified residential property or residential property of a prescribed class or description from the application of Division 3 of Part 10.
- (3) Regulations made under this Act may be made –
- (a) so as to confer a discretionary authority on the Board or the Trust; and

- (b) so as to provide, in a specified case or class of cases, for the exemption of a person or a class of persons from any of the provisions of the regulations whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- (4) A fee that may be imposed for registration is not limited to an extent that is related to the cost of registration, and different fees may be prescribed for different classes of registration.
- (5) A fee that may be imposed for the production to the Board of audited accounts and records of trust money is not limited to an extent that is related to the cost to the Board of checking those accounts or records, but may include a fee for the late delivery of the accounts or records.

212. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

213. Savings and transitional provisions

- (1) Words and expressions defined in the repealed Act and used in this section have the same meaning in this section as they do in that Act.
- (2) In this section –

“commencing day” means the day when the relevant provision of this Act commences.
- (3) A reference to the Council in any law or in any contract, award or other instrument to which the Council was a party is to be construed, except in relation to matters that occurred before the commencing day, as a reference to the Board.
- (4) The property, powers, rights, liabilities and obligations of the Council immediately before the commencing day become the property, powers, rights, liabilities and obligations of the Board on that day.
- (5) Legal or other proceedings instituted or to be instituted by or against the Council, and any legal or other proceeding that might have been continued or commenced by or against the Council, may be continued or commenced by or against the Board.
- (6) A person who was an officer or an employee of the Council immediately before the commencing day continues as an officer or employee of the Board as if they had been appointed to that office or employed by the Board as from the date they were appointed or employed by the Council.

- (7) A bank account maintained by the Council immediately before the commencing day continues in existence as a bank account maintained by the Board.
- (8) The money of the Board may be applied by the Board in payment or discharge of any expenses, charges, obligations or liabilities that were lawfully incurred or undertaken by the Council before the commencing day, in or in connection with the performance of its functions, and that were not paid or discharged before that day.
- (9) Where an application for a licence or a renewal of a licence was made under the repealed Act but not determined before the commencing day, the application is to be dealt with and determined by the Board as if the application had been made for registration under this Act, and this Act is to apply to the application accordingly.
- (10) The Board is to register in Part 1(1) of the Register the name of each person who immediately before the commencing day was a real estate agent.
- (11) For the avoidance of doubt, it is declared that, if immediately before the commencing day a body corporate was a real estate agent to which clause 11(3) of Part 2 of Schedule 3 to the repealed Act applied, the Board is to register the body corporate in Part 1(1) of the Register even though the body corporate may not comply with section 63(4).
- (12) The Board is to register in Part 1(2) of the Register the name of each person who immediately before the commencing day was a real estate manager.

- (13) The Board is to register in Part 3 of the Register the name of each person who immediately before the commencing day was the holder of a general auctioneers licence.
- (14) A person who immediately before the commencing day was a real estate sales consultant employed by a real estate agent is to be taken to be a person qualified under this Act to be a property consultant employed by that real estate agent.
- (15) A person who immediately before the commencing day was a real estate sales consultant performing the functions of an assistant property manager is to be taken to be a person qualified under this Act to be an assistant property manager.
- (16) The reference in section 63(2) to a person's name having been in the Register at any time during the 5 years immediately preceding the application for registration is to be taken to include any person who has been a real estate agent under the repealed Act at any time during that period.
- (17) Where the Council was holding an inquiry under section 108 of the repealed Act but on the commencing day had not reached a determination in respect of the subject of the inquiry, the Board is to, if it considers that the subject of the inquiry would have been the subject of a conduct complaint under Part 6, treat the subject of the inquiry as a new conduct complaint made to it under this Act on the commencing day.

- (18) A person aggrieved by the decision of the Council following an inquiry who had a right immediately before the commencing day to apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision is to retain that right as if the decision was from a review of a decision of the Board made on the same date as the decision of the Council.
- (19) A reference to the Auctioneers and Real Estate Agents Trust in any law or in any contract, award or other instrument to which the Auctioneers and Real Estate Agents Trust was a party, is to be construed, except in relation to matters that occurred before the commencing day, as a reference to the Property Agents Trust.
- (20) The alteration of the name and constitution of the Auctioneers and Real Estate Agents Trust pursuant to section 149 does not affect any property, powers, rights, liabilities or obligations of the body corporate continued in existence by that section.
- (21) The alteration of the name and constitution of the Auctioneers and Real Estate Agents Trust pursuant to section 149 does not render defective any legal or other proceedings instituted or to be instituted by or against the body corporate continued in existence by that section, and any legal or other proceeding that might have been continued or commenced by or against the body corporate under the name Auctioneers and Real Estate Agents Trust may be continued or commenced by or against the body corporate under the name the Property Agents Trust.
- (22) A person who was an officer or an employee of the Auctioneers and Real Estate Agents Trust

immediately before the commencing day continues as an officer or employee of the Property Agents Trust.

- (23) A bank account, including a trust deposit account, or any investment maintained by the Auctioneers and Real Estate Agents Trust immediately before the commencing day continues in existence as a bank account or investment maintained by the Property Agents Trust.
- (24) Any audit of the accounts and records of the Property Agents Trust in respect of any period beginning before and ending after the commencing day is to include an audit of any accounts and records of the Auctioneers and Real Estate Agents Trust during any part of that period occurring before that day as if they were the accounts and records of the Property Agents Trust.
- (25) Any report of the Property Agents Trust on the activities of that Trust during any period beginning before and ending after the commencing day is to include a report of any activities of the Auctioneers and Real Estate Agents Trust during any part of that period occurring before that day as if they were the activities of the Property Agents Trust.
- (26) Money received by the Property Agents Trust may be applied by that Trust in payment or discharge of any expenses, charges, obligations or liabilities that were lawfully incurred or undertaken before the commencing day by the Auctioneers and Real Estate Agents Trust, in or in connection with the performance of its

functions and that were not paid or discharged before that day.

214. Consequential amendments

The legislation specified in Schedule 1 is amended as specified in that Schedule.

215. Legislation repealed

The legislation specified in Schedule 2 is repealed.

216. Legislation rescinded

The legislation specified in Schedule 3 is rescinded.

SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 214

Second-hand Dealers and Pawnbrokers Act 1994

1. Section 3(1) is amended by omitting paragraph (a) from the definition of “second-hand dealer” and substituting:
 - (a) a real estate agent, or a general auctioneer, within the meaning of the *Property Agents and Land Transactions Act 2005*; or

Security and Investigations Agents Act 2002

1. Section 41(1)(i) is amended by omitting “the holder of a real estate agents licence under the *Auctioneers and Real Estate Agents Act 1991*” and substituting “a real estate agent, within the meaning of the *Property Agents and Land Transactions Act 2005*,”.

Shop Trading Hours Act 1984

1. Section 3A(3)(a) is amended by omitting “the holder of an auctioneer’s licence under the *Auctioneers and Real Estate Agents Act 1991*” and substituting “a real estate agent, or a general auctioneer, within the meaning of the *Property Agents and Land Transactions Act 2005*,”.

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SCHEDULE 2 – LEGISLATION REPEALED

Section 215

Auctioneers and Real Estate Agents Act 1991 (No. 37 of 1991)

sch. 3 No. *Property Agents and Land Transactions* 2005

SCHEDULE 3 – LEGISLATION RESCINDED

Section 216

Auctioneers and Real Estate Agents Regulations 1992 (No. 37
of 1992)

Auctioneers and Real Estate Agents Amendment Regulations
1996 (No. 110 of 1996)