

CLAUSE NOTES

Property Agents and Land Transactions Bill 2016

Part 1 – Preliminary

- Clause 1 **Short title**
This sets out the name of the proposed Act.
- Clause 2 **Commencement**
Provides that the Act is to commence on proclamation.
- Clause 3 **Definitions**
Interpretation of the terms used in this Act. Some of the key terms include:
- *approved form* – a form required by the Property Agents Board of Tasmania for applications for licences
 - *Board* – means the Property Agents Board
 - *employ* – to engage under a contract for services
 - *functions of a property representative* – clarifies the roles of performed by a person under the employ of a real estate agent or property manager
 - *general auctioneer* – a person who holds a valid general auctioneer licence
 - “*Guarantee Fund*” or “*Fund*” – means the Property Agents Guarantee Fund under section 149
 - *property agent* – provides for four property agent occupations: real estate agent, property manager, general auctioneer and property representative
- Clause 4 **Application of Act**
The Crown is not bound by any of the provisions of this Act.
This clause also provides that certain persons acting in specific legal capacities are able to perform functions or activities as part of a real estate agency business or property management business, including accountants.

Part 2 – Property Agents Board

- Clause 5 **Property Agents Board**
Establishes the statutory office of the Property Agents Board.
The Board is to consist of five persons (a legal practitioner, property agents, and other persons nominated by the Minister) as members of the Board, as appointed by the Governor.

The Board is a legal entity that can sue and be sued, and for whom judicial notice must be taken.

Schedule 1 contains the requirements of membership and meetings of the Board.

Clause 6 **Functions of Board**

Provides for the general functions of the Board. This includes providing details for compliance, dispute resolution, educational and complaint referral functions, as well as the reporting requirements to the Minister.

Clause 7 **Powers of the Board**

This clause provides for the general powers of the Board, including the ability to impose, charge or waive fees payable under the Act.

Clause 8 **Delegations**

The Board may delegate any of its functions or powers under the Act, except for the power to delegate or disciplinary actions.

Clause 9 **Contracts**

The Board may enter into contracts for persons to perform any of its functions or powers under the Act, except for the power to delegate or disciplinary actions.

Clause 10 **Committees**

Provides for the ability of the Board to establish committees for the purpose of assisting with the performance of any functions or powers.

This clause details the requirements of membership and meetings of committees, including remuneration and allowances.

Clause 11 **Employees**

Provides that the Board must employ an executive officer, who is to act as the Secretary of the Board.

This clause also allows the Board to employ any other persons as necessary

Clause 12 **Funds**

This clause provides for the requirements of the Board in regard to money it receives, including the ability to use funds to perform its functions and the ability for the Board to invest money as required.

Clause 13 **Accounts and Audits**

The Board is required to keep proper and accurate records of its financial transactions.

The Board must also prepare financial statements exhibiting a true and correct record of its financial position and transactions in respect of the preceding financial year. These reports are to be prepared within a certain time following 1 July in each year.

Clause 14

Annual Report

In addition to the accounts and audit reports, the Board is also to prepare and present to the Minister a report on its operations annually.

The Minister is to table the Annual Report in Parliament.

Part 3 – Licensing of Property Agents

Clause 15

Licence types

This clause provides for the four types of licences the Board may issue.

Clause 16

Applications

Provides for the process for licence applications to the Board.

Applications to the Board must contain statements as to the applicant's criminal history, including a record of offences in Tasmania, as issued by the Commissioner of Police, and a statement relating to the applicant's record of offences in any other jurisdiction.

The Board may request any other information or documents it considers relevant when considering an application.

Clause 17

Consideration of application

The Board has the power to make any inquiry considered relevant or necessary in relation to an application.

Clause 18

Suitability

The clause provides for the eligibility requirements an applicant, including the need for relevant qualifications and a 'fit and proper person' test.

The Board has the power to refer to the Commissioner of Police the name of the applicant and any information and documentation considered relevant, in order to determine whether an applicant is a 'fit and proper person'. The Commissioner of Police must inquire into, and report to the Board on any matters concerning the applicant.

This clause also details the circumstances where a natural person or company will not be considered a fit and proper person to hold a property agent licence.

Clause 19

Determination of applications

The Board may either grant or refuse an application for a property licence.

The Board must provide written notice of the outcome of the determination and the reasons for refusal (if applicable).

Clause 20

Licence conditions

Provides for the ability of the Board to issue a licence with any conditions considered appropriate, such as requiring the applicant or licence holders to obtain specific qualifications or undergo further professional development.

The Board also has the power to impose, change or rescind any conditions at any time after a licence is granted.

The Board must notify applicants and licence holders in writing of any conditions or changes to conditions, and it is an offence under the Act to breach any licence condition imposed.

Clause 21 Licence periods

Provides that a property agent licence will be valid for a period of 12 months.

This clause also provides for the ability of the licence to be transferred to the personal representative of a licence holder in the event of their death. The licence will be valid for a period of 12 months from the date of death.

Clause 22 Renewals

Licence holders must apply to the Board to renew their licence at least 60 days prior to their licence expiring, and must include the fee payable and any relevant documents and information.

Licences will remain valid until the renewal application has been considered by the Board.

Clause 23 Surrender of licence

Provides that licence holders may surrender their licence at any time.

Clause 24 Record of suspended licences

Provides that the Board must provide a publically available record of all suspended property agent licences.

Clause 25 Qualifications – Real estate agent

This clause provides for the required qualifications for a person or company to hold a real estate agent licence.

Clause 26 Qualifications – property manager

This clause provides for the required qualifications for a person or company to hold a property manager licence.

Clause 27 Qualifications – general auctioneer

This clause provides for the required qualifications for a person or company to hold a general auctioneer licence.

Clause 28 Qualifications – property representative

This clause provides for the required qualifications for a person or company to hold a property representative licence.

- Clause 29 Register**
Provides the Board is to maintain a publically available Register which is to include the name and address of every property agent.
The Register is to be divided into four parts for each category of property agent licence.
- Clause 30 Part 1 of Register – real estate agent**
This part of the Register is to contain the name and address of each real estate agent who is carrying on a real estate agency business, as well as contact details of the business. All other real estate agents are also to be recorded.
- Clause 31 Part 2 of Register – property manager**
This part of the Register is to contain the name and address of each property manager who is carrying on a property management business, as well as contact details of the business. All other property managers are also to be recorded.
- Clause 32 Part 3 of Register – general auctioneer**
This part of the Register is to contain the name and address of each general auctioneer who is carrying on a general auctioneering business, as well as contact details of the business. All other general auctioneers are also to be recorded.
- Clause 33 Part 4 of Register – property representative**
This part of the Register is to contain the name and address of each property representative.

Part 5 – Real Estate Agents and Property Managers

- Clause 34 Real estate agency business**
This clause establishes that it is an offence for a person to carry on a real estate agency business unless they are a licensed real estate agent and are listed in the Register.
- Clause 35 Property management business**
This clause establishes that it is an offence for a person to carry on a property management business unless they are a licensed property manager and are listed in the Register.
- Clause 36 Management of real estate agency business**
This clause establishes that it is an offence for a real estate agent to carry on a real estate agency business unless the business is carried out at an authorised place (as listed in the Register) and is managed by a licensed real estate agent.

A real estate agent can only manage one authorised place of business. However, they may apply to the Board to manage up to 3 authorised places of business, so long as they are within the same region.

A real estate agency business may be managed by a property representative for a specified period.

Clause 37 Management of property management business

This clause establishes that it is an offence for a property manager to carry on a property management business unless the business is carried out at an authorised place (as listed in the Register) and is managed by a licensed property manager or a real estate agent.

A property manager or real estate agent can only manage one authorised place of business. However, they may apply to the Board to manage up to 3 authorised places of business, so long as they are within the same region.

A property management business may be managed by a property representative for a specified period.

Clause 38 Employment of property representatives

It is an offence for a real estate agent or property manager to employ or enter into a contract with an unlicensed person to perform the functions of a property representative.

It is also an offence for a person to perform, or claim to be qualified to perform, the functions of a property representative.

Clause 39 Limitations on employees of real estate agents

Provides that property managers, property representatives or real estate agents can only be employed by one real estate agent or property manager at a time.

Clause 40 Limitations on employees of real estate agents

Provides that property managers, property representatives or real estate agents can only be employed by one real estate agent or property manager at a time.

Clause 41 Suspended licence – employment limitations

It is an offence for real estate agents to employ any person with a suspended property agent licence, except with the consent of the Board.

Clause 42 Suspended licence – employment limitations

It is an offence for property managers to employ any person with a suspended property agent licence, except with the consent of the Board.

Clause 43 Property representatives

It is an offence to perform the functions of a property representative unless the person is licensed as a property representative.

- Clause 44** **Appointment of real estate agents**
- Provides that the appointment of real estate agents will not be valid unless it is in writing and signed by all relevant parties (real estate agent and owner of property or business).
- This clause provides for the specific details that the appointment document must include, including clearly establishing the terms of the agreement for services, the termination procedure, and how any valuable consideration is to be applied and calculated.
- A copy of the document must be provided to all parties as soon as practicable after it is signed.
- Agency agreement appointments cannot last for more than 120 days, with the exception that the agent is engaged by a property developer.
- Clause 45** **Commissions on appointment expiry**
- This clause provides that real estate agents are entitled to recover or retain any valuable consideration for services in the situation where the specified property is sold by the vendor within 90 days of the appointment expiring or terminated, and the purchaser was introduced to the vendor or the property by the real estate agent.
- There is an exception to this clause where the sale of the specified property was completed by another real estate agent under a valid written appointment.
- Clause 46** **Appointment of property managers**
- Provides that the appointment of property managers will not be valid unless it is in writing and signed by all relevant parties (real estate agent and owner of property or business).
- This clause provides for the specific details that the appointment document must include, including clearly establishing the terms of the agreement for services, the termination procedure, and how any valuable consideration is to be applied and calculated.
- A copy of the document must be provided to all parties as soon as practicable after it is signed.
- Clause 47** **Disclosure of commissions**
- Provides for an offence where property agents fail to disclose any benefits or commissions of \$100 or more, they receive from third parties in exchange for referrals.
- Clause 48** **Fees not recoverable in certain circumstances**
- This clause sets out a number of circumstances where actions cannot be brought against a real estate agent, property manager or other person, unless certain conditions are met.
- Clause 49** **Conflicts of interest - acquisition**

This clause sets out a number of offences for property agents, as both individuals or through the course of business, where they acquire or attempt to acquire, directly or indirectly, an interest in property that the agent is instructed to sell. This includes interest being acquired on behalf of a relative of the agent.

This clause provides a defence where the owner provides written approval to the acquisition, prior to negotiations for the acquisition of interest are entered into and full disclosure has been made by the person seeking approval.

It is also a defence if the agent acted honestly and reasonably, and the owner who sold the property is not substantially disadvantaged by the acquisition.

Clause 50 Conflicts of interest – sale

It is an offence for a real estate agent to sell or attempt to sell an interest in property which is owned by the agent, an employee of the agent, or a relative of the agent, unless full disclosure has been made.

This clause provides a defence where it was not reasonable for the agent to have known they were related to the owner of the property.

Clause 51 Franchising agreements

This clause provides for the requirements of real estate agents carrying on a real estate agency business under a franchising agreement, including criminal or civil liability for breaching other provisions of the Act.

Clause 52 Notices to be displayed

Provides that at each authorised place of business, a notice stating the real estate agent's name and licence details must be clearly displayed.

Clause 53 Notices to be displayed

Provides that at each authorised place of business, a notice stating the property manager's name and licence details must be clearly displayed.

Clause 54 Advertisements requirements

Provides that published advertisements must state the real estate agent's name and authorised place of business address.

Clause 55 Advertisements requirements

Provides that published advertisements must state the property manager's name and authorised place of business address.

Clause 56 False or misleading advertising

It is an offence for property agents to publish any material in relation to the sale or letting of property that is known to be false or misleading.

Clause 57 Name under which real estate agents may carry on business

Unless authorised by the Board, real estate agents must only carry on business under the name of the agent or agents (if applicable).

Clause 58 Name under which real estate agents may carry on business

Unless authorised by the Board, property managers must only carry on business under the name of the property manager or property managers (if applicable).

Part 6 – Actions

Clause 59 Auctioneering

This clause establishes the offence where a person who is not licensed as a general auctioneer carries on a general auctioneering business or purports to be able to carry on the business.

It is also an offence to conduct a public auction of land unless the person is a real estate agent, or is employed or contracted by a real estate agency business, unless authorised by another Act, a Court or the auction is for a charitable purpose.

Clause 60 Management of general auctioneering business

This clause establishes that it is an offence for a general auctioneer to carry on a general auctioneering business unless the business is carried out at an authorised place (as listed in the Register) and is managed by a licensed general auctioneer.

Clause 61 Limitations on employees of general auctioneers

It is an offence for general auctioneers to employ any person with a suspended property agent licence, except with the consent of the Board.

Clause 62 Name under which general auctioneers may carry on business

Unless authorised by the Board, general auctioneers must only carry on business under the name of the auctioneer or auctioneers (if applicable).

Clause 63 Notices to be displayed

Provides that at each authorised place of business, a notice stating the general auctioneer's name and licence details must be clearly displayed.

Clause 64 Advertisements requirements

Provides that published advertisements must state the general auctioneer's name and authorised place of business address.

Clause 65 False or misleading advertising

It is an offence for general auctioneers to publish any material in relation to the sale of property by auction that is known to be false or misleading.

Clause 66 Misrepresentations

It is an offence for general auctioneers to knowingly make misrepresentations as to the value, composition, structure, character, quality, origin or manufacture of property which is for sale at public auction.

Clause 67

Bids by owner at public auction

It is an offence for an owner or person acting on the owner's behalf to bid with the intention of benefiting the owner, at a public auction in relation to the land.

This clause provides the exception of where the land was owned by multiple persons and one owner was attempting in good faith to acquire a greater interest in the land.

Clause 68

Permissible owner bids

Provides for limited circumstances where an auctioneer may make a bid on behalf of an owner.

The auctioneer must orally declare the intention to bid on behalf of the owner.

Clause 69

Dummy bids

It is an offence for auctioneers to acknowledge a bid where no bid was made.

Clause 70

Falsely acknowledged bid

It is an offence for a person to falsely claim they have made a bid at public auction.

Clause 71

Public availability of conditions

This clause provides the conditions that must be made available for public inspection before real estate agents can conduct a public auction of land.

Clause 72

Last vendor bids

Provides the process to be followed in the event where a public auction of land is conducted where the land is not sold, and the auctioneer makes a bid on behalf of the owner prior to concluding the auction.

The clause also provides for offences where information about the land is published, unless the person did not have first-hand knowledge of the auction.

Clause 73

Right to compensation for breach

Provides the right to claim compensation where a person has suffered a demonstrable loss or damage as a result of a person to comply with this Part of the Act.

Clause 74

Contrary conditions

Any public auction condition that conflicts, restricts or modifies a requirement under the Act is void.

Clause 75 Interpretation

Provides the definition of *auction* – means a public auction or private auction.

Clause 76 Unlawful bidding agreements

This clause provides for the offences in relation to providing or receiving consideration or reward to for abstaining from bidding at an auction.

Clause 77 Collusive practices

It is an offence for persons to colluding by means of unlawful promises, which results in a person abstaining from bidding or agreeing to do anything which prevents free and open competition at an auction.

Clause 78 Successful bidder to supply information

Provides that the successful bidder at an auction must provide certain details to the auctioneer as soon as practicable after acceptance of the bid, unless the details had already been supplied.

Clause 79 Notices given at auction

If approved by the Board, certain notices must be given prior to an auction.

Clause 80 Appointment of general auctioneers

Provides that unless granted leave by a Court, the appointment of general auctioneers cannot be relied upon and will not be valid unless it is in writing and signed by all relevant parties.

This clause provides for the specific details that the appointment document must include, including clearly establishing the terms of the agreement for services, how any valuable consideration is to be applied and calculated, and how expenses are to be recovered.

A copy of the document must be provided to all parties as soon as practicable after it is signed.

Clause 81 Disclosure of commissions

Provides for an offence where property agents fail to disclose any benefits or commissions of \$100 or more, they receive from third parties in exchange for referrals.

Clause 82 Fees not recoverable in certain circumstances

This clause sets out a number of circumstances where actions cannot be brought against a general auctioneer unless certain conditions are met.

- Clause 83** **Interpretation**
Interpretation of the terms used in this Part of the Act.
- Clause 84** **Code of Conduct**
Provides that the Board must establish and review a Code of Conduct for property agents, which regulates their professional practice, conduct and discipline.

The clause also provides that the Board is to appropriately consult with relevant industry and consumer representative bodies when establishing the Code.

The Code is to be made publically available, as well as issued to every property agent.
- Clause 85** **Application of the Code**
The Code of Conduct is to provide guidance and requirements to property agents in regard to unsatisfactory professional conduct and misconduct, including the consequences for breaching the Code.
- Clause 86** **Conduct complaints**
Provides for the ability for any person to make a complaint to the Board in regard to a property agent's conduct.

Complaints may be made against property agents who have had their licence suspended or cancelled, and previous property agents.
- Clause 87** **Making of Complaints**
This clause sets out the conditions and process in which a complaint may be made.
- Clause 88** **Time limits**
Complaints cannot be made more than 12 months after the conduct complained about is alleged to have occurred, unless a longer period is determined by the Board.

Complaints may be made about conduct alleged to have occurred prior to the commencement of the Act.
- Clause 89** **Further information and verification**
The Board has the power to request further information or verification by statutory declaration, in relation to a complaint.
- Clause 90** **Notification of compliant**
Provides that unless notice would prejudice an investigation of a complaint, the Board is to provide notice to the property agent within 7 days of accepting a complaint.

This clause also sets out the contents that must be included in the notice.

- Clause 91** **Submission by property agent**
- The property agent may lodge a submission to the Board in response to the complaint, within a specified period after being served notice.
- The Board has discretion to extend this period, and must consider the submission prior to making a determination about the compliant.
- Clause 92** **Summary dismissal of complaints**
- The Board may dismiss a complaint in certain circumstances, including if the conduct complained about has already been rectified through appropriate action.
- Clause 93** **Withdrawal of complaints**
- A complaint may be withdrawn at any time before the complaint has been referred to the Tribunal, by serving a written notice on the Board and the property agent.
- The Board may continue to investigate the complaint if it is withdrawn, if it is considered in the public interest to do so.
- If a person withdraws a complaint, unless they have approval by the Board, they have exhausted their right to make further complaint in respect to the alleged conduct. However this clause does not prevent a complaint being made by another person in respect to the same conduct.
- Clause 94** **Complaints to be investigated**
- Once the Board has accepted a conduct complaint, an investigation is to be undertaken.
- Clause 95** **Investigations without complaint**
- Nothing in this Act prevents the Board from initiating an investigation as to the conduct of a property agent.
- There are no notice requirements for Board initiated complaint investigations.
- Clause 96** **Appointment of investigator**
- The Board can appoint a committee or suitably qualified individual to investigate complaints and provide the Board a written report on the findings of the investigation.
- Notice must be given to the property agent.
- Clause 97** **Powers of investigation**
- Provides that the Board is to request the property agent take a number of actions in relation to the investigation, by way of written notice.
- Property agents that fail to comply with the notice requirements or provide false or misleading information or documentation, will be found guilty of professional misconduct.

- Clause 98** **Search warrants**
- Provides the ability for the Board to apply for a search warrant in relation to an investigation.
- This clause sets out the procedures in relation to search warrants.
- Clause 99** **Interim orders**
- If it is in the public interest to do so, the Board may issue a notice to the property agent during the investigation, suspending their licence for a specified period.
- Clause 100** **Powers of Board after investigation**
- Provides for the actions the Board may take following an investigation, including dismissing the complaint, undertake compliance actions for minor misconduct, or refer the compliant to the Tribunal.
- Clause 101** **Minor misconduct**
- Provides the procedure that must be taken by the Board if it is determined that the complaint only amounts to minor misconduct.
- This clause also sets out the circumstances where the complaint must be referred to the Tribunal.
- Clause 102** **Criminal offence suspected**
- Provides the procedure that must be taken by the Board if there is sufficient evidence that a person has committed a criminal offence, including the forwarding of the evidence to the Commissioner of Police.
- Clause 103** **Application**
- Provides that this Division applies to the Tribunal or any further Tribunal is established.
- Clause 104** **Establishment**
- Provides for the establishment and membership arrangements for the Tribunal.
- This clause provides that the President of the Tribunal is appointed by the Governor.
- Clause 105** **Delegations**
- Provides the President the power to delegate all functions and powers under the Act, with the exception of the power to delegate.
- Clause 106** **Responsibilities**
- This clause provides that the Board may request the Tribunal to develop and submit a report on any of its activities or provide further information as requested.
- The costs of the Tribunal are to be borne by the Board.

Clause 107	<p>Powers</p> <p>Provides for the powers of the Tribunal in relation to hearings, including the provision of an offence in relation to non-compliance with a requirement or direction made by the Tribunal.</p>
Clause 108	<p>Summons requirements</p> <p>This clause sets out the requirements that must be met for a summons sent by the Tribunal in relation to hearings.</p>
Clause 109	<p>Hearing procedures</p> <p>This clause establishes the procedures for a conduct complaint hearing.</p>
Clause 110	<p>Determinations</p> <p>Provides for the actions that may be taken by the Tribunal in relation to a hearing, including suspension or cancellation of licences, prohibition of conducting a property agent business for a set period or with conditions, imposition of fines, cautions or reprimands.</p> <p>The Tribunal may also require the agent to perform specified actions, including submit to supervision, inspection or undertake further training.</p> <p>This clause does not prevent any person from taking civil action against the property agent for damages.</p>
Clause 111	<p>Costs and expenses</p> <p>This clause provides the Tribunal the power to make orders for costs.</p>
Clause 112	<p>Notice of action</p> <p>Provides for the notice requirements applicable to the Tribunal in relation to determinations made and actions taken by the Tribunal.</p> <p>This clause provides the power for the Tribunal to publish decisions to the public, if considered necessary.</p>
Clause 113	<p>Indemnity</p> <p>This clause provides indemnity for the President and members of the Tribunal for any acts or omissions when made in good faith, and in the performance of their functions and powers under this Act.</p>
Clause 114	<p>Power of the Board to suspend licence</p> <p>Provides for the power of the Board to suspend property agent licences in certain circumstances.</p> <p>The Board is not required to hear from a property agent prior to suspending the licence, and the suspension must be provided by way of written notice.</p> <p>This clause provides the power for the Board to publish the suspension to the public, if considered necessary.</p>

Clause 115 **Revocation of suspension**

Provides that suspensions made by the Board or Tribunal may be revoked if it is considered in the public interest to do so.

This clause provides the power for the Board to publish the revocation to the public, if considered necessary.

Clause 116 **Right to appeal**

This clause sets out the rights of a person to appeal regarding decisions made by the Board.

Clause 117 **Review of decisions**

This clause establishes that a decision by the Tribunal may be subject to administrative review.

Part 8 – Control of Property Agents Carrying on Business

Clause 118 **Protection of trust money**

This clause provides for the procedure the Board must follow to protect trust money in a trust account with an authorised deposit-taking institution, held by a real estate agent, property manager or general auctioneer.

Clause 119 **Appointment of receiver or manager**

Provides the power to Board to consider defalcations or misappropriation of funds by a property agent who is trusted with its charge.

This clause provides for the consideration of the inability to obtain property agent trust money due to mental or physical infirmity, death or disappearance, suspension or cancellation or termination of the right to carry on property agency business.

The process for the Board to apply to a Magistrate to enable a person to be a receiver of that trust money or be the manager of the property agent business is also provided for.

Clause 120 **Duty of receiver**

Provides for the process by which a receiver can take control of trust money under the control of a property agent, and gather in any other trust money.

Clause 121 **Receiver may require delivery of trust money and supply of information**

This clause provides for a receiver of trust money to require the property agent, or any other person having control of that trust money, to either deliver up that money, accounts or records, or provide any information considered necessary.

- Clause 122 Dealings with trust account**
This provision establishes the procedure by which a receiver appointed in respect of the trust money of a property agent can serve an authorised deposit taking institution with a Magistrates order, to instruct that institution to not permit any withdrawal to be made from the trust account, except by the receiver.
- Clause 123 Power to take proceedings to recover trust money**
This clause enables a receiver to take proceedings to recover trust money stolen, embezzled, misappropriated or dealt with in breach of trust, in his or her name.
- Clause 124 Magistrate may give directions**
This clause provides for a magistrate to authorise the receiver to do what the magistrate thinks necessary to carry out the objects of this Division.
- Clause 125 Powers of manager**
This clause establishes the particular powers of a manager appointed to manage the business of a property agent.
- Clause 126 Obligations of manager**
This provides for an appointed manager to perform all functions that a property manager would have been required to perform by this Act, any other Act or by any agreement.
- Clause 127 Magistrate may give directions**
This clause provides for a magistrate to authorise and direct a manager to do anything considered necessary in order to carry out the objects of this Division, or to manage the business of a property agent.
- Clause 128 Remuneration**
This clause provides for a receiver or manager to be paid by way of remuneration for any costs that are either agreed with the Board or determined by a magistrate.
- Clause 129 Reporting requirements**
Provides for receivers or managers to report with information as required to the Board.
- Clause 130 Termination and appointment**
This provision enables the Board to terminate or appoint a receiver by applying for an order from a magistrate.
- Clause 131 Professional indemnity insurance**
This clause establishes that it is an offence for property agents under the Act to fail to maintain appropriate professional indemnity insurance cover.
This clause also provides for what the insurance must cover, that it is

provided for an approved insurance company, that evidence of such insurance must be produced to the Board when required and that it must be sufficient to comply with this provision.

- Clause 132** **Suspension of licence when professional indemnity insurance not in force**
- This clause establishes that property agents who fail to have professional indemnity insurance cover as required by this Division are taken to be suspended.
- Property agents must inform the Board on each renewal of the insurance cover.

Part 9 – Trust money, trust accounts and records

- Clause 133** **Trust money**
- This clause establishes what the definition of ‘trust money’ is under the Act, and that all trust money received by the property agent is to be held upon trust.
- Clause 134** **Trust account**
- This clause defines ‘trust account’ under the Act.
- Clause 135** **Trust money to be paid into trust account**
- It is an offence for property agents to fail to pay, or delay to pay, any trust money that is received into a trust account.
- This clause provides defences to this offence: if there is agreement by all parties (there is no right to any interest on the money as a result), and that money was paid into a trust account in the joint names of those parties.
- Clause 136** **Deficiency in trust account**
- This clause provides that it is an offence if a property agent, without reasonable excuse, causes a deficiency in a trust account maintained by a property agent or fails to pay or deliver any trust money.
- This clause also establishes that as soon as a property agent becomes aware of the deficiency, they must take reasonable steps must be taken to rectify the deficiency.
- Clause 137** **Reporting certain irregularities and suspected irregularities**
- This provides for written notice of irregularities in trust accounts must be given to the Board or to the Rental Deposit Authority, the Residential Tenancy Commissioner, or any other prescribed person or body.
- Clause 138** **Accounts regulations**
- This clause establishes that certain regulations relating to trust money, trust accounts and records may be made under this Act.

Clause 139 **Records of transactions**
This clause specifies that the Board may approve of records kept by property agents and the particular specifications that the Board requires.

Clause 140 **Inspection of records**
This clause provides for the power of the Board to serve written notice to any authorised deposit-taking institution where accounts under this Division may be kept, requiring that institution to undertake specified actions.
It is an offence if the institution fails to comply with the notice requirements.

Part 10 – Property Agents Trust and Guarantee Fund

Clause 141 **Property Agents Trust**
This clause establishes the Property Agents Trust.
The Trust is a legal entity that can sue and be sued, and for whom judicial notice must be taken.
This clause sets out the requirements for a Chair of the Trust, who is to be appointed by the Governor.
Schedule 3 contains the requirements of membership and meetings of the Trust.

Clause 142 **Functions of the Trust**
Provides for the general functions of the Trust. The functions of the Trust include establishing and maintaining the guarantee fund, administering the fund and paying compensation payable from the fund as required.

Clause 143 **Powers of the Trust**
This clause provides for the powers of the Trust to do anything necessary in the performance of its functions.

Clause 144 **Administrative accounts of the Trust**
This provision establishes the procedures in relation to how money from the guarantee fund may be used, including how payments to the Trust are to be made, and the manner in which money is to be invested.

Clause 145 **Accounts and reports**
This clause establishes financial reporting and auditing requirements for the Trust.
This clause also establishes that certain regulations relating to trust accounts and records, and additional auditing requirements, may be made under this Act.

- Clause 146** **Protection of Trust members**
- This clause provides indemnity for all members or officers of the Trust, for any actions done in good faith.
- Clause 147** **Board may enter into schemes of arrangement**
- This clause provides for the power of the Board to enter into schemes of arrangements with authorised deposit-taking institutions for the keeping of trust accounts.
- This clause also sets out the scheme of arrangement requirements.
- Clause 148** **Trust accounts to be kept only with approved institutions**
- It is an offence for property agents to keep or maintain trust accounts with unapproved deposit-taking institutions.
- Clause 149** **Property Agents Guarantee Fund**
- This clause establishes the Property Agents Trust Property Agents Guarantee Fund.
- This clause provides for the requirements of the Guarantee Fund, including the ability for the Trust to cover its operating and administrative expenses, and then pay all remaining money to the Fund.
- The clause also sets out how the Trust applies the Fund, as jointly agreed by the Minister and the Board, and the minimum amount the Fund is to be maintained.
- Clause 150** **Use of surplus money in the Guarantee Fund**
- This clause establishes the procedure for the use of any surplus money in the Guarantee Fund. The surplus must not be exhausted.
- Clause 151** **Administration of Guarantee Fund**
- This clause establishes that a trustee is to invest funds in any manner authorised by law.
- The clause also provides that any income derived from the investment of funds is to be added to the Guarantee Fund.
- Clause 152** **Right to claim compensation**
- This clause establishes the ability for any person to apply to the Board for compensation from the Guarantee Fund, for pecuniary or property loss suffered by a person arising from criminal or fraudulent conduct of a property agent under this Act.
- This clause sets out the notice requirements that must be met prior to making an application to the Board.
- This clause also provides that the amount of loss does not cover the amount that the applicant has recovered from any person in respect of the loss.

- Clause 153** **The Board may invite claims**
- This provision enables the Board to publish, by any manner considered appropriate, an invitation for any persons eligible to claim against the Guarantee Fund, to make an application to the Board within a specified time.
- Clause 154** **Manner and time for making an application**
- This clause specifies the required manner and timeframe that an application for compensation may be considered the Board.
- Clause 155** **Applicant for compensation to provide details of claim**
- Provides for the specific documentation that must accompany an application for compensation.
- Clause 156** **Board may seek further particulars**
- Provides power for the Board to seek further information or documentation from a person who has made an application for compensation.
- This clause also specifies procedures for requesting further information or documentation.
- Clause 157** **Board to consider application**
- This clause provides for procedures the Board must follow in relation to an application for compensation, including that a determination must be made as to whether a loss has been suffered and the extent of compensation that would cover the loss.
- The Board is required to provide written notice of its determination, including reasons to justify the determination, and informing the applicant of their right to apply for review of the decision.
- Clause 158** **Recovery of claims under professional indemnity insurance**
- This clause establishes the power of the Board to compel an applicant to instigate proceedings to recover any sum under professional indemnity insurance, before making a determination in relation to an application for compensation.
- This clause also provides that if the Board requires an applicant to institute proceedings, the Trust is to provide appropriate aid, including financial aid from the Guarantee Fund.
- Clause 159** **Trust of determine compensation payable**
- Provides that the Trust must consider any recommendations of the Board in relation to an application for compensation determination, and must determine the amount of compensation payable to the claimant.
- Clause 160** **Notice of determination**
- The Trust is required to provide written notice of its determination,

including reasons to justify the determination, and informing the applicant of their right to apply for review of the decision.

- Clause 161** **Reviews**
- This clause establishes that a determination made by the Board or the Trust under this Division may be subject to administrative review.
- Clause 162** **Payment of compensation**
- This clause establishes the procedures following a determination that compensation is payable under this Division.
- Clause 164** **Subrogation**
- This clause establishes that the Trust is subrogated to the rights of the person who receives compensation under this Division, against any other person in relation to the occurrence that gave rise to the claim for compensation. This means the Trust may attempt to recover the funds paid from the Guarantee Fund to a claimant, from the property agent or such person to which the claim relates.
- Clause 165** **Certain property agents may not claim**
- This clause establishes that property agents under this Act are not entitled to make a claim for compensation in certain circumstances.

Part 11 – Miscellaneous

- Clause 166** **Obstruction**
- It is an offence for a person to obstruct, threaten or intimidate a person performing a function or exercising a power under this Act.
- Clause 168** **Liability of directors**
- This clause provides immunity from the liability provisions for directors, managers, secretaries or any other similar officer of a company, where they can prove that the relevant offence was committed without their consent, and they exercised sufficient diligence to prevent the offence from being committed.
- Clause 167** **Infringement notices**
- Provides that infringement notices for offences under the Act may be issued by the Board or an authorised person.
- This clause sets out the procedures and serving requirements for infringement notices.
- This clause also establishes that certain regulations relating to infringement notices and penalties payable may be made under this Act.
- Clause 168** **Service of documents**
- This provision establishes the procedures by which documents under this

Act to be served.

Clause 169

Confidentiality

It is an offence for any person who obtains information under the Act to disclose that information, except for certain circumstances.

Clause 170

Regulations

Provides for making of regulations for the purposes of this Act.

Clause 171

Administration of Act

The Minister for Building and Construction and the Department of Justice are responsible for the administration of the Act.

Clause 172

Savings and transitional provisions

Provides for savings and transitional requirements under the Act, such as the transitioning from Registration to licensing, the Tribunal and the Panel.

Clause 173

Consequential amendments of regulations

This clause provides that amendments to regulations as a result of this Act do not prevent consequential amendments of those provisions by regulation.

Clause 174

Consequential amendments

The legislation specified in Schedule 4 is amended as specified.

Clause 175

Legislation Repealed

The legislation specified in Schedule 5 is repealed.

Schedule 1 – Membership and Meetings of Board

Part 1 – Membership of Board

Clause 1

Membership

These provisions establish the membership requirements for the Property Agents Board, including the appointment term of three years and that the *State Service Act 2000* does not apply to members of the Board.

Clause 2

Appointment conditions

These provide for the required conditions of appointment to the Property Agents Board, including Board members are to receive remuneration determined by the Minister as specified in their instrument of appointment.

This clause also states that members who are also State Service employees are not entitled to remuneration, unless otherwise determined by the Minister.

- Clause 3** **Vacancies**
- This clause establishes the required procedure when there is a vacancy in Board membership due to death, resignation, or removal from office.
- This clause also sets out the circumstances where membership of the Board may be terminated.
- Clause 4** **Validity of actions**
- Provides what the valid (and invalid) actions the Board, or a person acting on the direction of the Board, involve.
- Clause 5** **Presumptions in respect of Board**
- This clause establishes that for any proceedings by or against the Board, it is presumed that there was a quorum at a meeting of the Board, unless evidence can be provided to the contrary.

Part 2 – Meetings of Board

- Clause 1** **Meetings**
- This clause establishes the required procedures to convene meetings of the Board.
- Clause 2** **Presiding at meetings**
- This clause establishes that the Chair is to preside at meetings of the Board, unless the Chair is not present in which case members may elect another member to preside.
- Clause 3** **Procedure at meetings**
- This clause establishes the requirements for meetings of the Board, including the need for a quorum of three members, and the procedures in relation to questions, transactions, voting, adjournments and minutes and determinations of the meeting.
- Clause 4** **Interests to be disclosed**
- It is a requirement for members of the Board to disclose any conflict of interest, and must not be present during any meeting in relation to the conflict.
- Clause 5** **Indemnity**
- This clause provides indemnity for the members, employees or agents of the Board for any acts or omissions when made in good faith, and in the performance of their functions and powers under this Act.

Schedule 2 – Membership and Meetings of Tribunal

Part 1 – Membership of Tribunal

- Clause 1** **President**
- This clause establishes the appointment requirements for the President of the Tribunal, including remuneration and termination.
- Clause 2** **Members of Panel**
- This clause establishes the appointment requirements for members of the Panel on the Tribunal, including remuneration, conditions of office, and resignation.

Part 2 – Meetings of Tribunal

- Clause 1** **Meetings of Tribunal**
- This clause provides for requirements for a Tribunal hearing, including the need for a quorum of three members, appointment of persons to assist members, and the appointment of a registrar of the Tribunal.

Schedule 3 – Membership and Meetings of Trust

Part 1 – Membership of Trust

- Clause 1** **Term of office**
- The term of office for a member of the Trust is three years.
- Clause 2** **Vacation of office**
- This clause establishes that the Governor may appoint a person to hold office for the unexpired part of a member's term, if the membership is vacated before the end of their term of office.
- This clause also provides that the performance of Trust functions are not affected by vacancies or issues related to vacancies of membership.
- Clause 3** **Reappointment**
- Provides for eligibility for reappointment as a Trust member.
- Clause 4** **Holding other office**
- This clause allows members of the Trust to be able to hold office under other Acts.
- Clause 5** **State Service Act**
- The *State Service Act 2000* does not apply to members of the Trust.

- Clause 6** **Fees and allowances**
This clause establishes payment conditions that apply to Trust members.
- Clause 7** **Termination**
This clause establishes the conditions under which the Governor may remove a member from office, including inability, inefficiency, misbehaviour, or physical or mental incapacity.
- Clause 8** **Vacation of office**
This clause establishes the conditions under which the Governor must terminate the appointment of an member of the Trust.
- Clause 9** **Resignation**
Members of the Trust may resign at any time by written notice to the Governor.

Part 2 – Meetings of Trust

- Clause 1** **Convening of meetings**
This clause provides for requirements for a Trust meeting, including the requirement for the Chair to convene meetings as required for the efficient operation of the Trust, or when requested by a member of the Trust.
- Clause 2** **Presiding of meetings**
This clause establishes that the Chair is to preside at meetings of the Trust, unless the Chair is not present in which case members may elect another member to preside.
- Clause 3** **Quorum and voting**
This clause establishes that two members of the Trust constitute a quorum.
This clause also states that the presiding member has the deliberative vote, and provides for the process for equal votes, casting of votes and adjournments.
- Clause 4** **Procedure**
This clause states that the Trust has the power to determine its own procedures, except for sections of the Act that relate to Trust procedure.
The Trust must also keep a record of its proceedings.
- Clause 5** **Trust member not to act in certain circumstances**
This clause provides for the requirements and conditions in which a Trust member is not to act, and the requirement to disclose an direct or indirect pecuniary interests.
This clause also states the disclosure requirements.

Schedule 4 – Consequential Amendments

Australian Consumer Law (Tasmania) Regulations 2012

Clause 1 Removes the reference to the *Property Agents and Land Transactions Act 2005* and substitutes with the *Property Agents and Land Transactions Act 2016*.

Conveyancing Act 2004

Clause 1 Removes the reference to the *Property Agents and Land Transactions Act 2005* and substitutes with the *Property Agents and Land Transactions Act 2016*.

Clause 2 Removes the reference to the *Auctioneers and Real Estate Agents Act 1991* and substitutes with the *Property Agents and Land Transactions Act 2016*.

Clause 3 Removes the reference to the *Auctioneers and Real Estate Agents Act 1991* and substitutes with the *Property Agents and Land Transactions Act 2016*.

Justices Order 2004

Clause 1 Removes the reference to the *Property Agents and Land Transactions Act 2005* and substitutes with the *Property Agents and Land Transactions Act 2016*.

Legal Profession Act 2007

Clause 1 Removes the reference to the *Property Agents and Land Transactions Act 2005* and substitutes with the *Property Agents and Land Transactions Act 2016*.

Residential Tenancy Act 1997

Clause 1 Removes the reference to the *Property Agents and Land Transactions Act 2005* and substitutes with the *Property Agents and Land Transactions Act 2016*.

Second-Hand Dealers and Pawnbrokers Act 1994

Clause 1 Removes the reference to the *Property Agents and Land Transactions Act 2005* and substitutes with the *Property Agents and Land Transactions Act 2016*.

Security and Investigations Act 2002

Clause 1 Removes the reference to the *Property Agents and Land Transactions Act 2005* and substitutes with the *Property Agents and Land Transactions Act 2016*.

Shop Trading Hours Act 1984

Clause 1 Removes the reference to the *Property Agents and Land Transactions Act 2005* and substitutes with the *Property Agents and Land Transactions Act 2016*.

Schedule 5 – Legislation Repealed

As a result of this Act, the following legislation is repealed.

Property Agents and Land Transactions Act 2005 (No. 75 of 2005)

Property Agents and Land Transactions Amendment Act (No. 2) 2009 (No. 52 of 2009).