

CLAUSE NOTES **PROPERTY AGENTS AND LAND TRANSACTIONS AMENDMENT BILL 2009**

PART 1	PRELIMINARY
Clause 1	<p>Short Title</p> <p>The Act is referred to as the <i>Property Agents and Land Transactions Amendment Act 2008</i>.</p>
Clause 2	<p>Commencement</p> <p>The Act commences on Royal Assent. The provisions of Part 3 commence on a day or days to be proclaimed. These provisions relate to:</p> <ul style="list-style-type: none"> • section 64 amended (Qualifications for registration as real estate agent); • section 65 amended (Qualifications for registration as property manager); and • section 66 amended (Qualifications for registration as general auctioneer). <p>These sections are to take effect on proclamation, rather than upon Royal Assent, as they require amendments to the Regulations to the Act to take effect at the same time.</p>
PART 2	PROPERTY AGENTS AND LAND TRANSACTIONS ACT 2005 AMENDED
Clause 3	<p>Principal Act</p> <p>The principal Act is the <i>Property Agents and Land Transactions Act 2005</i>.</p>
Clause 4	<p>Section 3 amended (Interpretation)</p> <p>Amends Section 3(1) by inserting a definition of “notice of intention” as a notice referred to in sections 9(2)(b), 10(1)(b) or 10(2)(b).</p> <p>The notice refers to the notice of intention to enter the industry, which must be published in newspapers by intending employees of property managers or real estate agents:</p> <ul style="list-style-type: none"> ▪ 9(2)(b) – notice of intention to be employed by an assistant property manager; ▪ 10(1)(b) – notice of intention to be employed by a property consultant; ▪ 10(2)(b) – notice of intention to be employed by a property consultant (where that consultant is employed by a body corporate). <p>The definition of ‘notice of intention’ is referred to in Clause 5.</p>

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Clause 5	<p>Section 9 amended (Employment of property managers and assistant property managers)</p> <p>Currently, a property manager named in Part 2(1) of the Register must not employ a person to carry out the functions of an assistant property manager unless that person advertises in a newspaper published in the State and circulating generally in the State a notice, in a form approved by the Property Agents' Board, stating that the person intends to be employed as an assistant property manager</p> <p>Section 9 can be interpreted such that 'every time' an assistant property manager moves from one property manager to another, their intention to enter the industry must be advertised. This can occur frequently. The intention was that this should only be required to be done once upon entry to the industry. Section 9 is amended to clarify that an advertisement of an assistant property manager entering the industry need only be done once.</p> <p>Clause 5 also clarifies the process applicable where one person objects to another proposing to enter the industry as an assistant property manager. A notice of intention, published under subsection 9(2)(b) by a person (the "intending employee"), is to contain a statement that another person may object, within 14 days after the publication of the notice of intention, to the employment as an assistant property manager of the intending employee by giving written notice of objection to:</p> <ul style="list-style-type: none">• the Board; and• the intending employee; and• the property manager specified in the notice of intention.
Clause 6	<p>Section 10 amended (Employment of property consultants by real estate agents)</p> <p>Section 10, relates to the employment of property consultants by real estate agents. The section is amended, consistent with Section 9. This amendment clarifies that an advertisement of a property consultant entering the industry need only be done once.</p> <p>Clause 6 also clarifies the process where a person objects to a person proposing to enter the industry as a property consultant, in a manner similar to clause 5.</p>

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Clause 7	<p>Section 18 amended (Appointment of real estate agents to be in writing)</p> <p>Section 18(1) requires that, to have legal effect, an appointment of a real estate agent must be in writing. Section 18(7)(b) currently provides that where a written appointment contains no period for its termination agreed by the parties, it may be terminated by either party giving to the other 30 days written notice of termination.</p> <p>Clause 7 amends section 18(7) by clarifying that where a written appointment contains no period for its termination, or a period in excess of 30 days, it may be terminated by either party giving to the other at least 30 day's notice of termination.</p> <p>This requirement also applies to employees of the real estate agent (ie. property consultants, persons working in the capacity of property managers).</p> <p>Clause 7 also amends section 18(8) by inserting the word 'relevant', to clarify that, insofar as a written appointment mentioned in subsection (1) is an agency agreement, it is not valid for a period exceeding 90 days beginning on the day on which the relevant disclosure documents, or the last of the relevant disclosure documents, referred to in section 190 have been supplied by the vendor to the real estate agent.</p>
Clause 8	<p>Section 19 amended (Appointment of property managers to be in writing)</p> <p>Consistent with amendments to section 18 (appointment of real estate agents), this clause amends section 19 by clarifying that a written appointment relating to a property manager that is not expressed to be for a fixed period, or is expressed to be for a period of more than 30 days, may be terminated by either party giving to the other at least 30 days' written notice of termination.</p>
Clause 9	<p>Section 33 amended (General auctioneering business to be carried on by general auctioneer or real estate agent)</p> <p>Section 33(2) currently provides that a person shall not conduct a public auction of land unless that person is a real estate agent or a person employed by a real estate agent. This effectively excludes many real estate agents from conducting an auction unless they have somebody employed who is competent to conduct an auction. This was not intended and restricts the capacity of real estate agents to conduct auctions. Clause 9 amends section 33(2) by inserting "or otherwise contracted" after "employed", thereby clarifying that a real estate agent may contract the services of a competent auctioneer.</p>

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Clause 10	<p>Section 59 amended (Part 3 of Register)</p> <p>Part 3 of the Register concerns general auctioneers. Clause 10 amends section 59 to ensure that the Register, as it relates to general auctioneers, is consistent with provisions for real estate agents and property managers in sections 57 and 58:</p> <ul style="list-style-type: none"> • section 57 refers to Part 1 of the Register (real estate agents); and • section 58 refers to Part 2 of the Register (property managers). <p>Currently, there are no Divisions (1) and (2) within Part 3, as there are for Parts 1 and 2. The Act does not currently recognise auctioneers, other than those general auctioneers who conduct a business.</p>
Clause 11	<p>Section 81 amended (Duty of Board)</p> <p>Clause 11 clarifies the duty of the Board, to:</p> <ul style="list-style-type: none"> • to maintain the Register; and • administer the approval of qualifications for property agents.
Clause 12	<p>Section 182 amended (Interpretation of Part 10)</p> <p>Clause 12 facilitates separate provision for sales of land ‘off-the-plan’ and the application of Part 10 to residential sales only, The clause also clarifies a number of terms. The following terms are defined:</p> <p>“advertised for sale off-the-plan”</p> <p>“person” – provides a broad definition of person.</p> <p>“register of title” - the register of title referred to in section 33 of the <i>Land Titles Act 1980</i></p> <p>The definition of “residential land” is clarified to mean - (a) a hobby farm that is less than 50 hectares in area; or (b) land intended primarily for occupation as a place of residence – whether or not intended only for rental.</p> <p>The definition of “vendor” is clarified to mean a person who sells land or advertises land for sale.</p>
Clause 13	<p>Section 183 substituted</p> <p>Clause 17 excludes the application of Part 10 to residential tenancy agreements (leases) within the meaning of the <i>Residential Tenancy Act 1997</i>.</p>

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Clause 14	<p>Part 10, Division 2: Heading amended</p> <p>Clause 18 confirms that Part 10 is intended to apply to sales of “residential” land by amending the Heading to Part 10, Division 2 to read:</p> <p>‘Division 2 - Disclosure of information by vendors of residential land’.</p>
Clauses 15 & 16	<p>Section 185 amended (Application of Division)</p> <p>Section 186 amended (Vendors to provide relevant disclosure documents)</p> <p>Clauses 15 and 16 clarify that the vendor disclosure regime applies only to “residential” land “advertised” for sale.</p>
Clause 17	<p>Section 187 amended (Location of disclosure documents to be contained in advertisements)</p> <p>Section 187(1) provides that a real estate agent who advertises property in any newspaper must ensure that the advertisement contains a statement advising a purchaser of the means by which the disclosure documents may be obtained.</p> <p>Clause 17 amends section 187 to clarify that the documents referred to in section 187 are the relevant disclosure documents required to be provided by vendors under section 186. The relevant documents are detailed in section 190.</p>
Clause 18	<p>Section 188 amended (Vendors to provide relevant disclosure documents before public auction)</p> <p>Section 188 provides that in the case of a sale by public auction, in addition to the requirements under section 186, 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.</p> <p>Section 188 can currently be interpreted that the relevant disclosure documents must be provided potentially to every person in attendance at the auction. This was not intended.</p> <p>Clause 18 amends section 188 to clarify that, at the auction, the vendor or property agent need only make the relevant disclosure documents available to the purchaser, by displaying them prominently.</p>

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Clause 19	<p>Section 189 amended (Contract voidable if relevant disclosure documents not provided)</p> <p>Currently Section 189(1) reads ‘if a vendor enters into a contract for sale in respect of land and the relevant disclosure documents were not provided (ie. handed over) in accordance with section 186 and 188 the purchaser may at any time before settlement rescind the contract without penalty’.</p> <p>Section 186(1) requires that a vendor to make documents available by a number of means...(office , internet etc)</p> <p>Section 186(2) requires that a vendor, or any agent of the vendor, must give the relevant documents to the purchaser when requested by the purchaser to do so.</p> <p>Clause 19 clarifies that a purchaser, under a contract for the sale of residential land, may at any time before settlement rescind the contract without penalty if the relevant disclosure documents were not –</p> <ul style="list-style-type: none"> (a) available to the purchaser in accordance with section 186(1); or (b) given to the purchaser as required under section 186(2); or (c) made available to the purchaser as required under section 188 (auctions).
Clause 20	<p>Section 190 amended (Relevant disclosure documents)</p> <p>Section 190 details the relevant disclosure documents that must be provided by a vendor of residential land to a purchaser. Currently, a copy of the relevant folio of title must be provided. However, in case of sales ‘off-the-plan’, the vendor may not be in a position to provide a copy of the folio, or plan (as they may not have been created at that time).</p> <p>Clause 20, substitutes sub-sections 190(b) and (c) to require that, a copy of the relevant folio of the register of title or copy of the relevant plan (to which the folio refers) must be provided, unless the land is being offered for sale off-the-plan.</p> <p>In circumstances where a copy of the relevant folio is not available (eg sales of land ‘off the plan’), the current section 190(f) operates to allow for additional information to be prescribed.</p> <p>Clause 20 also ensures that, in relation to strata title sales, the vendor need only provide documents which are available.</p>

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Clause 21	<p>Section 191 amended (Vendor statements)</p> <p>Clause 21 allows the Director of Consumer Affairs and Fair Trading the flexibility to prescribe the vendor statement as a ‘form’ in the regulations, or if no ‘form’ is prescribed, in a format approved by the Director.</p>
Clause 22	<p>Section 192 amended (Warning notices)</p> <p>Section 192 requires that a warning notice required under section 190 must contain the prescribed information and must appear on the first page of a contract for the sale of land.</p> <p>Clause 22, consistent with other clauses, ensures that a warning notice required under section 190 is required for a contract for the sale of ‘residential’ land only.</p>
Clause 23	<p>Section 193 repealed</p> <p>Section 193 currently requires that ‘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’.</p> <p>Many properties remain ‘on the market’ for periods in excess of 6 months. Section 193 is viewed being unnecessarily onerous and therefore is deleted, as Disclosure documents are required to be ‘accurate’ and therefore current.</p>
Clause 24	<p>Section 196 amended (Liability of agent)</p> <p>Section 196 prescribes the requirement for agents to 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.</p> <p>Clause 24, consistent with other clauses, ensures that s196 relates only to a contract for the sale of ‘residential’ land.</p>
Clause 25	<p>Section 197 amended (Certain conditions to be implied in contract)</p> <p>The Section 197(1)(a), as currently drafted, may have the effect that land would be sold subject to any encumbrances registered on the title, including the vendor’s mortgage. This was not intended.</p> <p>Clause 25 omits section 197(1)(a), and clarifies that the section applies only to sales of ‘residential’ land.</p>

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Clause 26	<p>Section 203 amended (Right to rescind contract for sale of residential property – cooling off rights)</p> <p>Clause 26 amends section 203 to clarify that, during the cooling off period, notice of rescission may also be served on a ‘licensed conveyancer’, in addition to a legal practitioner.</p>
Clause 27	<p>Section 206 amended (Contracts, &c., to avoid requirements of this Part void)</p> <p>Section 206 provides that 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.</p> <p>Clause 27 clarifies that the section applies only to sales of ‘residential’ land.</p>
PART 3	PROPERTY AGENTS AND LAND TRANSACTIONS ACT 2005 FURTHER AMENDED
Clause 28	In Part 3 the Act referred to as the Principal Act is the <i>Property Agents and Land Transactions Act 2005</i> .
Clause 29	<p>Section 64 amended (Qualifications for registration as real estate agent)</p> <p>Currently, section 64(1) provides that the name of a person may be entered in Part 1 of the Register if the person :</p> <ul style="list-style-type: none"> (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. <p>Clause 29 replaces section 64(1). The definition of “property consultant” in section 3(1) refers to ‘qualifications’ and not ‘experience’. Regulation 42 of the Property Agents and Land Transactions Regulations prescribes a certain type of employment as a ‘qualification’ for the purposes of section 3(1). To ensure consistency, section 64 is amended by using the term ‘prescribed qualifications’, which includes “experience”.</p> <p>This amendment also provides greater flexibility to carry out legislative amendments should the qualifications for a real estate agent change in the future.</p>

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Clause 30	Section 65 amended (Qualifications for registration as property manager) Consistent with amendments to section 64, Clause 29 amends section 65 to provide that the name of a property manager may be entered in Part 2 of the Register if they possess the 'prescribed qualifications'.
Clause 31	Section 66 amended (Qualifications for registration as general auctioneer) Consistent with amendments to sections 64 and 65, Clause 30 amends section 66 to provide that the name of a general auctioneer may be entered in Part 3 of the Register if they possess the 'prescribed qualifications'.