

## SECOND READING SPEECH

### Conveyancing Amendment Bill 2012 and Property Agents and Land Transactions Bill 2012 - Cognate Bills

Mr Speaker, I move that the *Conveyancing Amendment Bill 2012* and the *Property Agents and Land Transactions Amendment Bill 2012* be read a second time.

Mr Speaker, the *Conveyancing Act 2004* licenses conveyancers in Tasmania. In particular, the Act specifies educational requirements for conveyancers, provides rules for the management of trust accounts and creates appropriate rules of conduct.

These Bills correct technical problems that have been identified in the trust account arrangements. To this extent, the Bills maintain and clarify existing policy.

The Conveyancing Act provides that a licensed conveyancer must maintain a trust account with an approved institution. However, the definition of approved institution refers to a repealed Act and this has created some confusion for conveyancers about their trust account obligations. Further, the relationship between conveyancers trust accounts and the Property Agents Guarantee Fund should be clearer.

The legislative intent of the Conveyancing Act is that a conveyancer is to deposit funds held on behalf of clients in a trust fund with an approved institution within the meaning of the Property Agents and Land Transactions Act.

Further, any interest earned on these funds is to be paid into the Guarantee Fund under a scheme of arrangement between the Property Agents' Board and the approved institution.

This in turn means that a consumer can make a claim against the Property Agents' Guarantee Fund in the event of fiduciary default by a conveyancer.

The reason for relying on the Property Agents' Guarantee Fund is simply that the number of conveyancers is too small to establish a separate fund as there are only 8 licensed conveyancers in Tasmania at this time.

However, it is important to note that in addition to the protection provided for consumers by the Guarantee Fund, conveyancers are required as a condition of their licence to carry professional indemnity insurance. No claim has been made against the Property Agents' Guarantee Fund as a result of fiduciary default.

The amendments ensure that the requirements for conveyancers to deposit trust funds into an approved institution are clear. The Bills also makes it clear that the interest on those funds is to be deposited with the Property Agents' Guarantee Fund.

The Property Agents Board has sought these amendments to clarify the relevant obligations. Conveyancers have also been consulted about the changes.

Mr Speaker, notwithstanding any ambiguity in the existing provisions, conveyancers have previously deposited funds in the appropriate authorised institutions and the interest has been paid into the Guarantee Fund. The Property and Land Transactions Amendment Bill validates these arrangements to ensure that there is no doubt about past practise, notwithstanding the previous technical errors in the Bill.

As the clarification of the existing policy requires amendment of both the Conveyancing Act and the Property and Land Transactions Act, the Bills are cognate and therefore are to be considered at the same time.

Mr Speaker, I commend the *Conveyancing Amendment Bill 2012* and the *Property Agents and Land Transactions Amendment Bill 2012* to the House.