

TASMANIA

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**PROPERTY AGENTS AND LAND TRANSACTIONS  
BILL 2016**

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# **PROPERTY AGENTS AND LAND TRANSACTIONS BILL 2016**

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

SHANE DONNELLY, *Clerk of the House*  
27 October 2016

*(Brought in by the Minister for Building and Construction, the  
Honourable Guy Barnett)*

## **A BILL FOR**

**An Act to regulate certain auction and real estate practices,  
to regulate property agents and to repeal the *Property  
Agents and Land Transactions Act 2005***

Be it enacted by Her 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 2016*.

### **2. Commencement**

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

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### 3. Interpretation

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

***approved form*** means a form approved by the Board;

***approved institution*** – see section 147(2);

***auditor*** 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 Institute of Public Accountants in Australia;

***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(1) 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 continued under section 5;

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***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 84;

***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 –

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- (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;

***employ*** includes engage under a contract for services;

***functions of a property representative*** includes all or any of the following functions performed by a person while in the employ of a real estate agent or property manager:

- (a) inducing or attempting to induce, or negotiating with a view to inducing, people to do all or any of the following:
  - (i) acquire or dispose of property or a business;
  - (ii) make an offer to acquire or dispose of property;
  - (iii) make an offer to acquire or dispose of a business;
  - (iv) enter into a contract for the acquisition or disposal of property;

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- (v) enter into a contract for the acquisition or disposal of a business;
- (b) negotiating the leasing or letting of property;
- (c) collecting rents for property that is leased or let;
- (d) managing property that is leased or let;

***general auctioneer*** means a person who holds a valid general auctioneer licence;

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

***general auctioneer licence*** – see section 15(c);

***Guarantee Fund*** or “**Fund**” means the fund as continued in existence by section 149 under the name Property Agents Guarantee Fund;

***legal practitioner*** means an Australian legal practitioner;

***licence*** means a valid licence issued under this Act;

***licence holder*** means a person who holds a licence;

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***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(1) 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;

***Panel*** means the Panel referred to in section 104(3);

***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, or a property representative;

***property agent licence*** means –

- (a) a real estate agent licence; and
- (b) a property manager licence; and

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(c) a general auctioneer licence; and

(d) a property representative licence;

***property agents industry*** means the business carried on by property agents;

***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 who holds a valid property manager licence;

***property manager licence*** – see section 15(b);

***property representative*** or “**representative**” means a person who holds a valid property representative licence;

***property representative licence*** – see section 15(d);

***public auction*** means an auction that has been publicly advertised;

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***publish*** means publish by any means including by publication on the internet;

***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 who holds a valid real estate agent licence;

***real estate agent licence*** – see section 15(a);

***region*** means the northern region, the north-western region or the southern region;

***Register*** means the Register of Property Agents maintained by the Board under section 29;



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***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;

***Rental Deposit Authority*** means the Rental Deposit Authority established under section 48K of the *Residential Tenancy Act 1997*;

***repealed Act*** means the *Property Agents and Land Transactions Act 2005*;

***Residential Tenancy Commissioner*** means the person appointed under section 7 of the *Residential Tenancy Act 1997*;

***sale*** means a disposition of property for valuable consideration;

***scheme of arrangement*** means a scheme of arrangement referred to in section 147;

***statutory authority*** means a body or authority, whether incorporated or not, that is established or constituted by or under an Act or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another statutory authority, but does not include an Agency, within the meaning of the *State Service Act 2000*;

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***Tribunal*** means a Tribunal established in accordance with section 104;

***Trust*** means the trust as continued in existence by section 141 under the name Property Agents Trust;

***trust account*** – see section 134;

***trust money*** – see section 133.

(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 1(2) of the Register is a reference to Division (2) of Part 1 of the Register; and
- (c) a reference to Part 2(1) of the Register is a reference to Division (1) of Part 2 of the Register; and
- (d) a reference to Part 2(2) of the Register is a reference to Division (2) of Part 2 of the Register; and
- (e) a reference to Part 3(1) of the Register is a reference to Division (1) of Part 3 of the Register; and
- (f) a reference to Part 3(2) of the Register is a reference to Division (2) of Part 3 of the Register.

#### **4. Application of Act**

(1) In this section –

***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 Institute of Public Accountants in Australia.

(2) This Act does not bind the Crown.

(3) Nothing in this Act prohibits the following persons from carrying out an activity that is part of a real estate agency business or property management business:

- (a) a liquidator or receiver;
- (b) a person who is subject to a guardianship order under the *Guardianship and Administration Act 1995* or an assessment order or treatment order under the *Mental Health Act 2013*;
- (c) a trustee company within the meaning of the *Trustee Companies Act 1953*;
- (d) a legal practitioner –

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if that person is performing functions in that capacity.

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

**PART 2 – PROPERTY AGENTS BOARD**

*Division 1 – The Board*

**5. Property Agents Board continued**

- (1) The Property Agents Board established under section 70 of the repealed Act continues in existence for the purposes of this Act.
- (2) The Board consists of the following persons appointed by the Governor:
  - (a) a legal practitioner, nominated by the Minister, who is of at least 5 years' standing and who has legal experience in areas of law relevant to the position, who is to be the Chair of the Board;
  - (b) a property agent, nominated by the body that the Minister is satisfied represents the views of the majority of property agents, who has at least 5 years' experience as a property agent;
  - (c) a property agent, nominated by the Minister, who has at least 5 years' experience as a property agent;
  - (d) 2 persons, nominated by the Minister, who are not property agents.
- (3) The Board –
  - (a) is a body corporate with perpetual succession; and

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- (b) may sue and be sued in its corporate name; and
  - (c) may have a seal.
- (4) 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.
- (5) Schedule 1 has effect with respect to the membership and meetings of the Board.

**6. Functions of Board**

- (1) The Board has the following functions:
- (a) to administer the licensing system for property agents established by this Act;
  - (b) to maintain the Register;
  - (c) to ensure that property agents comply with the requirements of this Act relating to their conduct in carrying on their businesses or in performing their functions and, where they fail to do so, to take appropriate action, including disciplinary action, to protect the public and to discourage such conduct;

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- (d) to ensure that people do not act as property agents unless they are permitted to do so under this Act;
  - (e) to develop and ensure compliance with a Code of Conduct for property agents;
  - (f) to receive, investigate and determine complaints against property agents;
  - (g) to provide support in the resolution of disputes relating to the conduct of property agents;
  - (h) to supervise the trust accounts of property agents;
  - (i) to advise property agents on appropriate standards of conduct;
  - (j) to monitor, identify and report to the Minister trends and issues that emerge within the property agents industry;
  - (k) to perform educational functions for the purposes of this Act;
  - (l) 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;
  - (m) to perform any other function imposed on the Board by this or any other Act;
  - (n) such other functions as may be prescribed.

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- (2) The function mentioned in subsection (1)(f) includes –
- (a) referring complaints in respect of a serious offence, within the meaning of Part 7, 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)(k) 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.

**7. Powers of Board**

- (1) The Board has power to do all things necessary or convenient to be done in connection with the performance of its functions.
- (2) This power includes the power to impose fees and charges for performing its functions under



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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.
- (4) The Board may waive, remit or refund part or all of a fee or charge payable to the Board under this Act.

**8. Delegation by Board**

The Board may, by instrument in writing, delegate any of its functions or powers under this or any other Act other than this power of delegation and the power to discipline property agents.

**9. Contracts**

The Board may enter into a contract with any person for the performance or exercise by that person of any of the Board's functions or powers under this Act or any other Act other than the power to discipline property agents.

**10. Committees of Board**

- (1) The Board may establish such committees as it considers necessary for the purpose of assisting it in the performance of any of its functions or the exercise of any of its powers.

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- (2) A committee consists of such persons as the Board appoints.
- (3) A member of the Board may be a member of a committee.
- (4) Subject to subsection (5), the Board may pay a member of a committee remuneration and allowances.
- (5) 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 (4) unless the Minister administering the *State Service Act 2000* determines otherwise.
- (6) The Board may give written directions to a committee and the committee must comply with those directions.
- (7) A committee is to keep accurate minutes of its proceedings.
- (8) A committee is to regulate its proceedings in accordance with any directions given by the Board but may otherwise regulate its own proceedings.

**11. Employees of Board**

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

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

***Division 2 – Finances and reports***

**12. 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 perform 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.

**13. Accounts and audit**

- (1) The Board is to keep proper accounts and records of its financial transactions and, as soon as practicable after 1 July and not later than 31

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October in each year, is to prepare financial statements exhibiting a true and correct record of its financial position and transactions in respect of the preceding financial year.

- (2) The accounts of the Board kept for the purposes of this Act are subject to the *Financial Management and Audit Act 1990*.

**14. Annual report**

- (1) The Board is to, on or before 31 October after the end of each financial year, prepare and present to the Minister a report on its operations for that 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

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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 receiving it from the Board.

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Part 3 – Licensing of Property Agents

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**PART 3 – LICENSING OF PROPERTY AGENTS**

*Division 1 – Types of property agent licence*

**15. Types of licences**

The Board may issue the following types of licence under section 19(1)(a):

- (a) a real estate agent licence;
- (b) a property manager licence;
- (c) a general auctioneer licence;
- (d) a property representative licence.

*Division 2 – Application for licence*

**16. Application for licence**

- (1) A person may apply to the Board for a licence.
- (2) An application is to be in an approved form and accompanied by –
  - (a) any prescribed fee; and
  - (b) a statement relating to the applicant's record of offences in Tasmania issued by the Commissioner of Police; and
  - (c) a statement relating to the applicant's record of offences in any other place issued by a person holding an office in another State or a Territory that

corresponds to the office of Commissioner of Police in this State; and

- (d) any consent by any person to the disclosure of information as the Board considers relevant for the purposes of investigating the application; and
- (e) any other documents and information the Board requires.

#### **17. Consideration of application**

The Board may make such inquiries regarding an application for a licence as the Board considers necessary or expedient for a proper consideration of the application.

#### **18. Suitability of applicant**

- (1) The Board must not grant an application for a licence unless satisfied that the applicant –
  - (a) has the relevant qualifications specified in Division 3 to be licensed; and
  - (b) is a fit and proper person to hold a property agent licence.
- (2) The Board may request an applicant to produce further evidence to satisfy the Board that the applicant is –
  - (a) qualified to be licensed; or

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- (b) a fit and proper person to hold a property agent licence.
- (3) For the purposes of determining whether an applicant for a licence is a fit and proper person, the Board may refer to the Commissioner of Police –
  - (a) the name of the applicant for the licence; and
  - (b) any information and documentation that the Board considers relevant.
- (4) The Commissioner of Police must inquire into, and report to the Board on, any matters concerning the applicant that the Board requests.
- (5) A natural person is not a fit and proper person to hold a property agent licence –
  - (a) if the person is an undischarged bankrupt; or
  - (b) if the person 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; or
  - (c) if the Board otherwise determines that the person is not a fit and proper person to hold a property agent licence.
- (6) A company is not a fit and proper person to hold a property agent licence if –



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- (a) it is in receivership or in liquidation; or
  - (b) it has taken proceedings for voluntary winding-up (except for the purpose of reorganisation); or
  - (c) it has a winding-up order made in respect of it by the Supreme Court; or
  - (d) it has a director, manager, secretary or other similar officer who is suspended from being a property agent under this Act; or
  - (e) the Board otherwise determines that it is not a fit and proper person to hold a property agent licence.
- (7) In this section, a reference to an applicant includes in the case of an applicant that is a body corporate, a reference to the chief executive officer and each director of the body corporate.

**19. Determination of licence application**

- (1) The Board is to determine an application for a property agent licence by –
  - (a) granting the application and issuing the appropriate type of property agent licence to the applicant; or
  - (b) refusing the application.
- (2) The Board must give the applicant written notice of –

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- (a) the grant of an application; or
- (b) the refusal to grant an application and the reasons for the refusal.

**20. Conditions of licence**

- (1) The Board may issue a licence subject to such conditions as the Board considers appropriate.
- (2) The Board may at any time after the licence is issued –
  - (a) impose new conditions on the licence; or
  - (b) amend or vary a condition of the licence; or
  - (c) rescind a condition of the licence.
- (3) Without limiting subsections (1) and (2), a licence may be subject to conditions of the following kind:
  - (a) a condition requiring the licensee to undertake or complete a specified course of studies within a specified period of time;
  - (b) a condition requiring the licensee to undertake, by way of professional development, specified further education or training during the term of the licence.
- (4) The Board, by notice in writing, must notify the licensee of –

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- (a) any addition, amendment, variation or rescission of a condition of the licence; and
  - (b) the reasons for it.
- (5) A licence holder must not contravene a condition of his or her licence.

Penalty: Fine not exceeding 50 penalty units.

**21. Period of validity of licence**

- (1) A licence is valid for the period, not exceeding 12 months, determined by the Board.
- (2) The licence commences on the date on which it was issued or a later date determined by the Board.
- (3) A licence ceases to be valid if –
  - (a) the licence holder surrenders it to the Board; or
  - (b) it is suspended or cancelled in accordance with this Act.
- (4) If the holder of a licence dies, the personal representative of that person is taken to be the licence holder for 12 months from the death of the person.

**22. Renewal of licence**

- (1) Not less than 60 days before the expiration of a property agent licence, the holder of the licence

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may apply to the board for the renewal of the licence.

- (2) The Board, at its discretion, may accept an application for the renewal of a property agent licence lodged less than 60 days before the expiration of the licence.
- (3) An application for renewal must be –
  - (a) in an approved form; and
  - (b) accompanied by any prescribed fee and, in the case of an application accepted under subsection (2), any further prescribed late fee; and
  - (c) accompanied by any documents and information the Board requires.
- (4) Sections 17, 18, 19, 20 and 21 apply in respect of an application for, and the issue of, the renewal of a licence in the same manner as they apply to an application for, and the issue of, a licence.
- (5) If an application for renewal of a licence is made under this section, the current licence continues in force until it is renewed or its renewal is refused.
- (6) The renewal of a licence takes effect from the date on which the licence was due to expire.
- (7) The refusal to renew a licence takes effect on the date of the notice of refusal.

**23. Surrender of licence**

A property agent licence may be surrendered to the Board at any time.

**24. Record of suspended licences**

The Board is to keep a register of all property agent licences that are suspended under this Act and is to make the register available for public inspection during normal business hours.

***Division 3 – Qualifications***

**25. Qualifications for real estate agent licence**

A person is qualified to be granted a real estate agent licence if –

- (a) the person’s name has been in Part 1 of the Register at any time during the 5-year period immediately preceding the licence application; or
- (b) in the case of a natural person, the person –
  - (i) has the prescribed educational qualifications; and
  - (ii) has, during the 5-year period immediately preceding the licence application, been employed as a property manager or property representative for –

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- (A) a period of at least 2 years full-time employment; or
  - (B) periods of part-time employment that total 2 years; or
- (c) in the case of a company, at least one of its directors holds a real estate agent licence; or
- (d) the person –
  - (i) 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 real estate agency business in that State or Territory; and
  - (ii) has been employed full time in real estate agency business 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 licence application; and
  - (iii) 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.

**26. Qualifications for property manager licence**

A person is qualified to be granted a property manager licence if –

- (a) the person’s name has been in Part 2 of the Register at any time during the 5-year period immediately preceding the licence application; or
- (b) in the case of a natural person, the person –
  - (i) has the prescribed educational qualifications; and
  - (ii) 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; or
- (c) in the case of a company, one of its directors holds a property manager licence; or
- (d) the person –
  - (i) 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 property management business in that State or Territory; and

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- (ii) has been employed full time in property management business 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 licence application; and
- (iii) 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 property management business to be able to carry on that business.

**27. Qualifications for general auctioneer licence**

A person is qualified to be granted a general auctioneer licence if –

- (a) the person's name has been in Part 3 of the Register at any time during the 5-year period immediately preceding the licence application; or
- (b) in the case of a natural person, the person –
  - (i) has the prescribed educational qualifications; or
  - (ii) satisfies the Board, by examination or inquiry, that the person has sufficient knowledge and experience of general



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auctioneering business to be able to carry on that business; or

- (c) in the case of a company, one of its directors holds a general auctioneer licence; or
- (d) the person –
  - (i) 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 general auctioneering business in that State or Territory; and
  - (ii) has been employed full time in general auctioneering business 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 licence application; and
  - (iii) 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 general auctioneering business to be able to carry on that business.

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**28. Qualifications for property representative licence**

A person is qualified to be granted a property representative licence if the person –

- (a) has the prescribed educational qualifications; or
- (b) satisfies the Board, by examination or inquiry, that the person has sufficient knowledge and experience of the functions of a property representative to be able to carry on that occupation.

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**PART 4 – REGISTER**

**29. Board to maintain Register**

- (1) The Board is to maintain a Register of Property Agents.
- (2) The Register is to be divided into 4 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; and
  - (d) Part 4 – Property Representatives, which is to contain the name and address of each property representative.
- (4) The Register may be kept in any form that permits its contents to be readily inspected in a legible form.
- (5) The Board is to make the Register available for public inspection during normal business hours.

**30. Part 1 of Register**

- (1) Part 1 of the Register is to be divided into –

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- (a) Division (1), which is to contain the name and address of each real estate agent who is carrying on real estate agency business and show, in addition, the address of each place where that agent is carrying on that business and the name under which that agent is doing so; and
  - (b) Division (2), which is to contain the names and addresses of all other real estate agents and any other information approved by the Board.
- (2) If 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 agent.

**31. 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 property manager who is carrying on property management business and show, in addition, the address of each place where that manager is carrying on that business and the name under which that manager is doing so; and
  - (b) Division (2), which is to contain the names and addresses of all other property managers and any other information approved by the Board.

- (2) If 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 manager.

**32. Part 3 of Register**

- (1) Part 3 of the Register is to be divided into –
- (a) Division (1), which is to contain the name and address of each general auctioneer who is carrying on general auctioneering business and show, in addition, the address of each place where that general auctioneer is carrying on that business and the name under which that general auctioneer is doing so; and
  - (b) Division (2), which is to contain the names and addresses of all other general auctioneers and any other information approved by the Board.
- (2) If 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 general auctioneer.

**33. Part 4 of the Register**

Part 4 of the Register is to contain the names and addresses of all property representatives and any other information approved by the Board.

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**PART 5 – REAL ESTATE AGENTS AND PROPERTY MANAGERS**

*Division 1 – Conduct of real estate agency business and property management business*

**34. 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 he or she is a real estate agent named in Part 1(1) of the Register.

Penalty: Fine not exceeding 1 000 penalty units.

**35. 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 he or she is a property manager named in Part 2(1) of the Register.

Penalty: Fine not exceeding 1 000 penalty units.

**36. Management of real estate agency business**

- (1) Subject to subsection (7), a real estate agent named in Part 1(1) of the Register must not carry

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on real estate agency business unless the business is –

- (a) carried on at an authorised place of business; and
- (b) managed by –
  - (i) the real estate agent; or
  - (ii) 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 real estate agency business unless it is carried on at an authorised place of business for that real estate agency business.

Penalty: Fine not exceeding 50 penalty units.

- (3) A real estate agent, unless authorised by the Board, must not manage real estate agency business at more than one authorised place of business.

Penalty: Fine not exceeding 50 penalty units.

- (4) The Board may authorise a real estate agent to manage real estate agency business at no more than 3 authorised places of business.
- (5) Before authorising a real estate agent under subsection (4), the Board must be satisfied that –

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- (a) the real estate agent is competent to manage the real estate agency business; and
  - (b) the places of business are all in the same region.
- (6) For the purpose of this section, a real estate agency business 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.
- (7) If for any reason a real estate agency business at an authorised place of business 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 real estate agency business to be managed, for such period as the Board is to specify, by a property representative employed by the agent.

**37. Management of property management business**

- (1) A property manager named in Part 2(1) of the Register must not carry on property management business unless the business is –
- (a) carried on at an authorised place of business; and
  - (b) managed by –
    - (i) the property manager; or



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(ii) a property manager, named in Part 2(2) of the Register employed by the property manager; or

(iii) a real estate agent, named in Part 1(2) of the Register employed by the property manager.

Penalty: Fine not exceeding 50 penalty units.

(2) A property manager named in Part 2(2) of the Register or a real estate agent named in Part 1(2) of the Register must not manage a property management business unless it is carried on at an authorised place of business for that property management business.

Penalty: Fine not exceeding 50 penalty units.

(3) A property manager or real estate agent, unless authorised by the Board, must not manage a property management business at more than one authorised place of business.

Penalty: Fine not exceeding 50 penalty units.

(4) The Board may authorise a property manager or real estate agent to manage property management business at no more than 3 authorised places of business.

(5) Before authorising a property manager or real estate agent under subsection (4), the Board must be satisfied that –

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- (a) the property manager or real estate agent is competent to manage the property management business; and
  - (b) the places of business are all in the same region.
- (6) For the purpose of this section, a property management business is being managed by a property manager or real estate agent if the manager or 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.
- (7) Despite subsection (1), if for any reason the property management business at an authorised place of business cannot be managed by –
- (a) the property manager; or
  - (b) by a property manager or real estate agent 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 a property representative employed by the manager.

**38. Employment of property representatives**

- (1) A real estate agent named in Part 1(1) of the Register or a property manager named in Part 2(1) of the Register must not employ a person to perform the functions of a property

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representative on behalf of the property manager or real estate agent unless the person is a property representative.

Penalty: Fine not exceeding 500 penalty units.

- (2) A real estate agent named in Part 1(1) of the Register or a property manager named in Part 2(1) of the Register must not enter into a contract with a body corporate for the performance, by a person who is an employee or contractor of the body corporate, of the functions of a property representative unless the individual is a property representative.

Penalty: Fine not exceeding 500 penalty units.

- (3) A person must not, by any means, hold himself or herself out as being a property representative employed or contracted by a real estate agent named in Part 1(1) of the Register or a property manager named in Part 2(1) of the Register, or by a body corporate, unless the person is so employed or contracted.

Penalty: Fine not exceeding 100 penalty units.

- (4) A person must not, by any means, perform, or hold himself or herself out as qualified or prepared to perform, any of the functions of a property representative unless the person is a property representative.

Penalty: Fine not exceeding 100 penalty units.

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**39. Limitations on employees of real estate agents**

(1) This section applies to –

- (a) a real estate agent employed by another real estate agent to manage a branch of that agent’s real estate agency business; and
- (b) a property manager, property representative, or real estate agent, 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.

**40. Limitations on employees of property managers**

(1) This section applies to a property manager, a real estate agent or a property representative, employed by a property manager named in Part 2(1) of the Register.

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- (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.

**41. Limitation on employment of certain people by real estate agents**

Except with the consent of the Board, a real estate agent named in Part 1(1) of the Register must not employ in any capacity a person whose property agent licence is suspended under this Act.

Penalty: Fine not exceeding 500 penalty units.

**42. Limitation on employment of certain people by property managers**

Except with the consent of the Board, a property manager named in Part 2(1) of the Register must not employ in any capacity a person whose property agent licence is suspended under this Act.

Penalty: Fine not exceeding 500 penalty units.

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**43. Property representatives**

A person must not perform the functions of a property representative unless the person is a property representative.

Penalty: Fine not exceeding 500 penalty units.

***Division 2 – Remuneration of real estate agents and property managers***

**44. Appointment of real estate agents to be in writing**

(1) 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.
- (2) 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

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to act for the person in that capacity signed by the person or by a person authorised to sign on his or her behalf.

- (3) An appointment is not valid for the purposes of subsection (2) 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 person, and how those expenses are to be recouped; and
  - (e) clearly sets out how either party to the agreement may terminate the appointment.
- (4) 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 (2) 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.

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- (5) The onus of proof that subsection (4) was complied with is on the person who obtained the signature.
- (6) A real estate agent must not –
  - (a) demand any valuable consideration in contravention of subsection (2); 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.

- (7) Any valuable consideration received by a real estate agent in contravention of subsection (2) or (6) is recoverable as a debt by the person from whom the real estate agent received it.
- (8) A written appointment under subsection (2) that –
  - (a) is not an agency agreement; and
  - (b) 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.

- (9) A written appointment under subsection (2) that is an agency agreement may be terminated by either party giving to the other not more than 30 days' written notice of termination.



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- (10) A written appointment under subsection (2) that is an agency agreement is not valid for a period exceeding 120 days beginning on the day the agreement is signed.
- (11) However, subsection (10) 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.

**45. Entitlement to commission after written appointment expires**

- (1) In this section –

*specified property*, in relation to a written appointment under section 44(2), means a property specified in that appointment.

- (2) A real estate agent appointed to act for a person (*the vendor*) under a written appointment under section 44(2), is entitled to sue for, recover or retain any valuable consideration for services provided under that written appointment if –
  - (a) within 90 days after the expiry or termination of the written appointment, the specified property is sold by the vendor; and
  - (b) the real estate agent had –
    - (i) introduced the purchaser to the vendor; or

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- (ii) shown the specified property to the purchaser; and
  - (c) the introduction or showing of the property was the effective cause of the sale.
- (3) Subsection (2) does not apply if the sale of the specified property is subject to a valid written appointment under section 44(2).

**46. 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

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- (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 may terminate the appointment.
- (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.

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- (7) A written appointment mentioned in subsection (1) 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.

**47. Property agent to disclose any benefits**

- (1) In this section –

*benefit* includes commission.

- (2) Subject to subsection (4), 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.

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

- (a) any fee or other amount that the agent may otherwise have been entitled to receive from the person for whom the agent is engaged to act is not payable; and

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- (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.
- (4) Subsection (2) does not apply to a benefit worth \$100 or less.

**48. 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.

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- (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*

**49. Conflict of interest – acquisition of property**

- (1) A real estate agent or a person employed 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 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 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.

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- (4) A real estate agent that is a company is guilty of an offence if a director 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 subsection (1), (2), (3) or (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;  
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- (b) the person who sold the property is in substantially as good a position as if 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 by the agent, or a director of the agent, has acquired an interest in property in contravention of this section.

Penalty: Fine not exceeding 500 penalty units.

- (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.

**50. 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 –



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- (a) the real estate agent; or
- (b) a person employed by the real estate agent; or
- (c) where the real estate agent is a company, a director 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).

**51. Franchising agreements**

- (1) In this section –

*franchising agreement* means an agreement that permits a real estate agent to carry on

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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 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 135 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.

**52. 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 destroy the notice as soon as practicable.

Penalty: Fine not exceeding 50 penalty units.

**53. Notice to be displayed by property managers**

- (1) A property manager 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 destroy the notice as soon as practicable.

Penalty: Fine not exceeding 50 penalty units.

**54. Requirements of advertisements by real estate agents**

A real estate agent must ensure that advertisements published in connection with the agent's real estate agency business contain the real estate agent's name and the address of the agent's authorised place of business.

Penalty: Fine not exceeding 50 penalty units.

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**55. Requirements of advertisements by property managers**

A property manager must ensure that advertisements published in connection with the manager's property management business contain the property manager's name and the address of the manager's authorised place of business.

Penalty: Fine not exceeding 50 penalty units.

**56. False or misleading advertising, &c., by property agents**

A property agent must not represent in any way to someone else anything that the agent knows is false or misleading in relation to the letting or sale of property.

Penalty: Fine not exceeding 500 penalty units.

**57. Name under which real estate agents may carry on business**

- (1) Subject to subsection (2), a real estate agent must not carry on real estate agency business otherwise than 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

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name in addition to, or in substitution for, the name of the agent or agents.

- (3) If 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 Registration Act 2011* of the Commonwealth.

**58. Name under which property managers may carry on business**

- (1) Subject to subsection (2), a property manager must not carry on property management business otherwise than 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) If 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 Registration Act 2011* of the Commonwealth.

**PART 6 – AUCTIONS**

*Division 1 – Conduct of auctions*

**59. Auctioneering 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(1) 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 or a person employed or otherwise contracted by such a real estate agent 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 that 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).
- (4) This Part applies to a public auction referred to in subsection (3) and a reference to an auctioneer is taken to include a reference to a person conducting an auction in accordance with that subsection.

**60. Management of general auctioneering business**

- (1) A general auctioneer named in Part 3(1) of the Register must not carry on general auctioneering business unless the business is –
  - (a) carried on at an authorised place of business; and
  - (b) managed by –
    - (i) the general auctioneer; or
    - (ii) a general auctioneer named in Part 3(2) of the Register employed by the auctioneer.

Penalty: Fine not exceeding 50 penalty units.

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

Penalty: Fine not exceeding 50 penalty units.

**61. Limitation on employment of certain people by general auctioneers**

Except with the consent of the Board, a general auctioneer named in Part 3(1) of the Register must not employ in any capacity a person whose property agent licence is suspended under this Act.

Penalty: Fine not exceeding 500 penalty units.

**62. Name under which general auctioneer may carry on business**

- (1) Subject to subsection (2), a general auctioneer must not carry on general auctioneering business otherwise than 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) If 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 Registration Act 2011* of the Commonwealth.



**63. Notice to be displayed**

- (1) A general auctioneer must display 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 destroy the notice as soon as practicable.

Penalty: Fine not exceeding 50 penalty units.

**64. Requirements of advertisements by general auctioneers**

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

Penalty: Fine not exceeding 50 penalty units.

**65. False advertising, &c., by general auctioneers**

A general auctioneer must not represent in any way to someone else anything that the auctioneer knows is false or misleading in relation to the sale of property by auction.

Penalty: Fine not exceeding 500 penalty units.

***Division 2 – Conduct at public auctions***

**66. 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.

**67. 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 not exceeding 500 penalty units.

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- (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.

**68. Permissible owner bids**

- (1) Despite section 67, an auctioneer conducting a public auction of land may make a bid on behalf of an owner of the land if –

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- (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.

**69. 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.

**70. 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.

**71. 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 has made available for public inspection a copy of the conditions under which the auction is to be conducted.

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

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auction at the place where it was to be conducted.

**72. 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”.

### **73. 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.

**74. 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.

***Division 3 – Conduct of public auctions and private auctions***

**75. Interpretation of Division 3**

In this Division –

*auction* means a public auction or private auction.

**76. 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.



**77. 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 –

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- (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.

**78. 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.

**79. 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 67, 69, 70, 76, 77 and 78 in any manner and form approved by the Board.

Penalty: Fine not exceeding 50 penalty units.

***Division 4 – Remuneration of general auctioneers***

**80. Appointment of general auctioneer to be in writing**

- (1) Except by leave of a court, a general auctioneer named in Part 3(1) of the Register 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 another person authorised to sign on the person's 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

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- (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 named in Part 3(1) of the Register 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.

**81. General auctioneer to disclose any benefits**

(1) In this section –

*benefit* includes commission.

(2) 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.

- (3) If a general auctioneer fails to comply with subsection (2), 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.
- (4) Subsection (2) does not apply to a benefit worth \$100 or less.

**82. 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 named in Part 3(1) of the Register both when engaged to act as such and while so acting.
- (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 auctioneering 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.

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**PART 7 – COMPLAINTS AND DISCIPLINE**

*Division 1 – Preliminary*

**83. Interpretation of Part 6**

(1) In this Part –

*conduct* means conduct 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;

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***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) If it is proved that unsatisfactory professional conduct or professional misconduct committed by a person employed 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(1) 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.

*Division 2 – Code of Conduct*

**84. Code of Conduct to be developed by Board**

- (1) The Board must establish and keep under review a Code of Conduct for property agents to regulate their professional practice, conduct and discipline.
- (2) The Code of Conduct may relate to provisions of this Act in respect of –
- (a) the licensing of property agents; and
  - (b) the qualifications required for each class of property agent; and
  - (c) the cancellation or suspension of, or the imposition of conditions on, property agents licences; and

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- (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; and
  - (f) prohibiting or regulating advertisements by property agents, including the form and content of advertisements and the manner in which advertisements may be published or displayed.
- (3) 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.
- (4) 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.
- (5) The Board is to cause the Code and every revised edition of it to be printed and issued to each property agent.

- (6) The Board is also to publish the Code in such a manner as to make it easily available to members of the public.

### **85. 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(1) of the Register has to supervise people employed by the agent, manager or auctioneer, and the agent's, manager's or auctioneer's liability in the event of their failure 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, but the failure may be relied upon as tending to establish that the property agent was guilty of unsatisfactory professional conduct or professional misconduct.

### ***Division 3 – Complaints about conduct of property agents***

### **86. Complaints about conduct of property agents**

- (1) A complaint may be made to the Board about the conduct of a property agent by any person.

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- (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.
- (3) The fact that the licence of a property agent was suspended or had been cancelled 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) This Part applies in relation to the conduct of a person who 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 –
- in the same way as it would if the person were licensed as a property agent.

**87. Making of complaints**

- (1) A conduct complaint is to be made to the Board in writing and lodged with the Board’s executive officer.
- (2) The executive officer is not to accept the lodgement of 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) describes the alleged conduct that is the subject of the complaint; 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; and
  - (d) if the complainant has already complained to the property agent about the conduct of the agent, contains details of the action taken by the complainant and any action taken by the agent as a result of the complaint.
- (3) On receipt of a complaint, the executive officer is to –
  - (a) record the date on which the complaint was lodged; and

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- (b) bring the conduct complaint to the Board's attention at the first practicable opportunity.
- (4) The executive officer is to take all reasonable steps to ensure that a person who wishes to make a conduct complaint is given such assistance as is necessary to enable that person to lodge a conduct complaint with the Board.

**88. Time limits for complaints**

- (1) A complaint cannot be dealt with (otherwise than to dismiss it) if the complaint is made more than 12 months after the conduct complained about is alleged to have occurred, unless the Board determines that –
  - (a) it would not cause injustice to deal with the complaint; or
  - (b) it is in the public interest to deal with the complaint.
- (2) Subject to subsection (1), the Board may deal with a conduct complaint although the conduct complained about is alleged to have occurred before the commencement of this section.

**89. Further information and verification**

The Board may require a complainant to do either or both of the following:

- (a) give further information about the complaint;

- (b) verify the complaint, or any further information, by statutory declaration.

**90. Property agent to be notified of complaint**

- (1) Unless a conduct complaint is summarily dismissed under section 92, the Board must, within 7 days of the acceptance of the lodgement of a conduct complaint in respect of a property agent, give the property agent written notice of the receipt of the complaint.
- (2) Despite subsection (1), the Board may withhold for a reasonable time giving notice in accordance with that subsection if the Board 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 property agent in respect of that conduct; and
  - (c) contain details of any action already taken by the Board in respect of the complaint.

**91. Submission by property agent**

- (1) A property agent who is the subject of a conduct complaint may, within a period specified by the

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Board, make submissions to the Board about the conduct complaint or its subject matter or both.

- (2) The Board may at its discretion extend the period in which submissions may be made.
- (3) The Board must consider the submissions made by the property agent before deciding what action is to be taken in relation to the complaint.

**92. Summary dismissal of complaints**

- (1) The Board may dismiss a complaint if –
  - (a) any information it requests the complainant to provide to the Board 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; or
  - (c) the Board is satisfied that the complaint is vexatious, misconceived, frivolous or lacking in substance.
- (2) 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 appropriate action was taken in respect of that previous complaint.



**93. 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 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) A conduct complaint cannot be withdrawn if at the time of the notice of withdrawal the Board has referred the conduct complaint to the Tribunal.
- (5) If a conduct complaint is withdrawn, the Board is to notify the property agent who is the subject of the conduct complaint of the withdrawal.
- (6) A 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) If 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 is sufficient justification for accepting the conduct complaint again.

***Division 4 – Investigations of conduct complaints***

**94. Complaints to be investigated**

- (1) The Board is to investigate each conduct complaint accepted by it 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 the property agent does not prejudice any investigation into the affairs of the property agent being carried out under any other part of this Act or under any other Act.

**95. Investigation on Board's initiative**

- (1) The Board may on its own initiative investigate the conduct of a property agent.
- (2) If the Board investigates the conduct of a property agent on its own initiative, the resolution of the Board to do so is to be taken as acceptance by the Board of a conduct complaint.
- (3) In such a case, the complainant is taken to be the Board, but nothing in this Part is to be taken as requiring the Board to serve any notice upon itself, but the Board must give notice to the property agent in accordance with section 90.

**96. Appointment of investigator**

- (1) The Board may, in writing, appoint a committee or a suitably qualified person to investigate a

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complaint on the Board's behalf and report back to the Board on the findings of that investigation.

- (2) If the Board appoints a committee or another person to carry out an investigation, it must give the property agent concerned written notice of the action it has taken, and advise the property agent that the property agent may make submissions to the committee or other person.
- (3) As soon as practicable after completing an investigation, the investigator must give a written report of the investigation to the Board.

**97. Powers of investigation**

- (1) In this section –

*specified* means specified in a notice under subsection (2).

- (2) For the purposes of an investigation, the Board may give a written notice to a property agent, whose conduct is the subject of a conduct complaint, that requires the property agent to take the following actions:
  - (a) provide the Board with written information of a specified type, on or before a specified date, that is verified by statutory declaration;
  - (b) produce, at a specified time and specified place, a specified document, or a copy of the document;

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- (c) to otherwise assist or cooperate with the Board in the investigation of the complaint in a specified manner.
- (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 (2) 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.
- (6) The Board may, during the course of an investigation, serve more than one notice on a property agent under subsection (2).

**98. 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

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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 magistrate to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant.
- (3) A warrant issued under subsection (2) 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 exercise any or all of the powers specified in subsection (4) that are not expressly excluded by the magistrate who issued the warrant.
- (4) A person who has entered premises pursuant to a warrant issued under subsection (2) may –
  - (a) search the premises for information, documents or other material relevant to a conduct complaint; and
  - (b) take possession of any material relevant to a conduct complaint and retain it for as long as may be necessary to examine it to determine its evidentiary value; and
  - (c) make copies of material relevant to a conduct complaint or any part of any such material; and
  - (d) seize and take away any material relevant to a conduct complaint or any part of any such material; and

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- (e) with respect to any computer or other equipment that the person suspects on reasonable grounds may contain material relevant to a conduct complaint –
  - (i) inspect and gain access to the computer or equipment; and
  - (ii) download or otherwise obtain any documents or information; and
  - (iii) make copies of any documents or information held in it; and
  - (iv) seize and take away the computer or equipment or any part of it provided adequate arrangements are made to enable the business of the property agent to continue; and
- (f) request any person who is on the premises to do any of the following:
  - (i) state his or her full name, date of birth and address;
  - (ii) produce material relevant to a conduct complaint;
  - (iii) operate equipment or facilities on the premises for a purpose relevant to the investigation of a conduct complaint;
  - (iv) provide access (free of charge) to photocopying equipment on the

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premises that the investigator reasonably requires to enable the copying of material relevant to a conduct complaint;

(v) give other assistance that the investigator reasonably requires to carry out the investigation;

(g) do anything else reasonably necessary to obtain information or evidence for the purposes of the investigation of a conduct complaint.

(5) A person requested to do anything under subsection (4)(f) must not, without reasonable excuse, fail to comply with the request.

Penalty: Fine not exceeding 500 penalty units.

**99. Interim order for suspension of licence**

(1) If, during the investigation of a conduct complaint in respect of a property agent, the Board is satisfied that it is in the public interest to do so, it may, by written notice sent to the property agent, suspend the property agent's licence for a period specified in the notice.

(2) If at any time the Board is satisfied that it is in the public interest to do so, it may, by written notice sent to the property agent, extend the suspension for a further period specified in the notice.

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- (3) The Board must, by written notice sent to the property agent, revoke the suspension as soon as it is satisfied that doing so would not prejudice the public interest.

**100. Powers of Board after investigation**

After the Board has investigated a conduct complaint, the Board may do any one of the following:

- (a) if there is insufficient evidence to substantiate the complaint, dismiss the complaint and notify the property agent and complainant of the dismissal;
- (b) if the evidence appears to indicate that the conduct complained about only amounts to minor misconduct that can adequately be dealt with by the Board, deal with the matter in accordance with section 101;
- (c) refer the conduct complaint to the Tribunal.

**101. Procedure for minor misconduct**

- (1) If the Board decides the conduct complained about 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



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specified in the notice, being a date at least 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 at least 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 the Board decides that there is insufficient evidence to substantiate the complaint, the Board must dismiss the complaint and advise the property agent and complainant of the decision.
- (6) However, if the Board is satisfied that the evidence substantiates the complaint, it may do either or both of the following:
  - (a) caution or reprimand the property agent;

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- (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 be dealt with adequately by the Board.

**102. 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) The Board or Tribunal 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 5 – Establishment of Tribunal***

**103. 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 under 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 under this Division.

**104. Establishment of Tribunal**

- (1) A Tribunal is established for the purposes of this Act.
- (2) The Tribunal consists of –
  - (a) the President of the Tribunal; and
  - (b) a person chosen by the President from the members of the Panel appointed under subsection (3)(a); and

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- (c) a person chosen by the President from the members of the Panel appointed under subsection (3)(b).
- (3) The Panel referred to in subsection (2) 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.
- (4) 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.
- (5) Schedule 2 has effect with respect to the membership and meetings of the Tribunal.

**105. Delegation by President**

The President may, by instrument in writing, delegate any of his or her functions or powers under this or any other Act other than this power of delegation.

**106. Responsibilities of Tribunal and Board**

- (1) The President of the Tribunal is to submit to the Board a report on the activities of the Tribunal 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.

**107. 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 under subsection (1).

Penalty: Fine not exceeding 500 penalty units.

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- (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 less than 14 days after the date on which the summons is served.

**108. 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 to be 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 less than 14 days after the date on which the summons is served.

**109. 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 to the hearing 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.

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***Division 6 – Action following hearing***

**110. 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 licence of the property agent;
  - (b) cancel the licence of the property agent and prohibit the Board from licensing him or her 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;



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- (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 under subsection (1).
- (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.

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**111. 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.

**112. 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 110; and
  - (b) any right, in respect of a review of a decision under section 117, 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 under section 110 does not take effect until the end of the period

within which the property agent may apply for a review against the decision.

- (5) 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.

### **113. Indemnity**

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

#### *Division 7 – Suspension of licence*

### **114. Power of Board to suspend licence**

- (1) The Board may, by written notice sent to a property agent, suspend the licence of that property agent if –
- (a) it is satisfied that the property agent has failed –
- (i) to pay a fine imposed on the property agent by the Tribunal within the specified time; or
  - (ii) to comply with a requirement made of the property agent by the Board or the Tribunal under section 108 or 110; or

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- (iii) to honour an undertaking given to the Board or Tribunal; or
  - (b) 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; or
  - (c) 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; or
  - (d) the right of the property agent to act as a property agent under the law of another jurisdiction has been suspended or cancelled for a reason relating to the property agent's professional conduct or physical or mental capacity.
- (2) The suspension may be a total or a partial suspension.
  - (3) The Board is not required to give a property agent an opportunity to be heard before suspending the agent's licence, but may do so.
  - (4) A notice under subsection (1) must set out –
    - (a) whether the suspension is total or partial and, if it is partial, the activities of the property agent to which the suspension applies; and
    - (b) the reasons for the suspension; and

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

#### **115. Revocation of suspension**

- (1) If the Board or Tribunal has suspended the licence of a property agent, it may revoke the suspension 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 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 8 – Appeals***

#### **116. Right to appeal decisions of Board**

- (1) An aggrieved person may appeal to the Tribunal against a decision of the Board under this Act.

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- (2) In particular, a person may appeal against a decision of the Board –
  - (a) to refuse to grant or renew a licence; or
  - (b) to suspend the person’s property agent licence.
- (3) An appeal under this section is to be made in writing –
  - (a) within 14 days after notice of the Board’s decision is given to the person; or
  - (b) within such further period as the Tribunal considers is appropriate in the interest of justice.
- (4) An appeal under this section stays the operation of the decision that is the subject of the appeal.
- (5) At the hearing of an appeal, the Tribunal may –
  - (a) confirm the decision under appeal; or
  - (b) set aside the decision and direct the Board to take such action as the Tribunal considers necessary.

**117. Review of decisions of Tribunal**

A person, including the Board, may apply under the *Magistrates Court (Administrative Appeals Division) Act 2001* for a review of a decision of the Tribunal.

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**PART 8 – CONTROL OF PROPERTY AGENTS  
CARRYING ON BUSINESSES**

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

**118. 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(1) of the Register.
- (2) The Board may, by notice served on the authorised deposit-taking institution, 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) A notice under subsection (2) is to give details of the trust account and be signed by the Chair of the Board or by an officer of the Board authorised to do so.
- (4) An authorised deposit-taking institution must comply with an instruction contained in a notice served on it under subsection (2).

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Penalty: Fine not exceeding 50 penalty units.

**119. 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(1) 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 cancellation 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



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auctioneering business of the property agent for any other reason.

- (3) If 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).

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- (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 under subsection (8) generally or in respect of any particular person.

**120. 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.

**121. 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 –

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- (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 under subsection (1).

Penalty: Fine not exceeding 500 penalty units.

**122. 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 under subsection (1).

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Penalty: Fine not exceeding 500 penalty units.

**123. 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.

**124. 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.

**125. 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.

#### **126. 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 by this Act or any other Act, or by any agreement.

#### **127. 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.

#### **128. 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 –

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- (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.

**129. 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.

**130. 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***

**131. 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(1) 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 defalcation 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 –

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- (a) claims by 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 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.



**132. Suspension of licence when professional indemnity insurance not in force**

- (1) The licence 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 is to take such action as it considers necessary, including disciplinary action, in respect of a property agent that its records show does not have the insurance cover required by this Division.

**PART 9 – TRUST MONEY, TRUST ACCOUNTS AND RECORDS**

**133. Trust money**

- (1) Trust money is money that –
  - (a) is received by –
    - (i) a real estate agent named in Part 1(1) of the Register; or
    - (ii) a property manager named in Part 2(1) of the Register; or
    - (iii) a general auctioneer named in Part 3(1) of the Register; and
  - (b) is received by that property agent –
    - (i) on behalf of a party to negotiations in which the property agent is involved; or
    - (ii) as a stakeholder; or
    - (iii) on behalf of another person as rent for property that is leased or let; and
  - (c) 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.

**134. Trust account**

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(1) of the Register.

**135. 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(1) of the Register; or
- (d) a person employed 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.

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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.

**136. Deficiency in trust account**

- (1) In this section –

*cause* includes be responsible for;

*deficiency* in a trust account includes the non-inclusion or exclusion of the whole or any part of an amount that is required to be included in the account.
- (2) A property agent is guilty of an offence if he or she, without reasonable excuse, causes –
  - (a) a deficiency in a trust account maintained by the property agent; or
  - (b) a failure to pay or deliver any trust money.

Penalty: Fine not exceeding 200 penalty units.

- (3) If a property agent becomes aware of a deficiency in a trust account maintained by the property agent, the property agent must take reasonable steps to rectify the deficiency.

Penalty: Fine not exceeding 200 penalty units.

**137. Reporting certain irregularities and suspected irregularities**

- (1) In this section –

*authority* means the following:

- (a) the Rental Deposit Authority;
  - (b) the Residential Tenancy Commissioner;
  - (c) any other person or body prescribed for the purposes of this definition.
- (2) As soon as practicable after a property agent becomes aware of an irregularity in a trust account maintained by the property agent, the property agent must give written notice of the irregularity to –
- (a) the Board; and
  - (b) if an authority is responsible under an Act for the regulation of the trust account concerned, that authority.

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Penalty: Fine not exceeding 50 penalty units.

**138. Accounts regulations**

- (1) Without limiting the generality of section 170, 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

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- (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.

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- (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.

**139. 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(1) of the Register.



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- (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.

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

- (1) The Board may serve a written notice, on any authorised deposit-taking institution where

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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.

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- (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 10 – PROPERTY AGENTS TRUST AND  
GUARANTEE FUND**

*Division 1 – Property Agents Trust*

**141. Property Agents Trust**

- (1) The body corporate that was continued as the Property Agents Trust under section 150(1) of the repealed Act is continued as a body corporate under that name for the purposes of this Act.
- (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 Trust; 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.
- (4) The Trust consists of –
  - (a) the Chair of the Trust appointed by the Governor; 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.

- (5) The Chair of the Trust is not to be –
- (a) a property agent; or
  - (b) a representative of property agents; or
  - (c) a member of the Board.
- (6) Schedule 3 has effect with respect to the membership and meetings of the Trust.

#### **142. 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(1) of the Register, their directors and people employed 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 4 of this Part to be payable from the fund.

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**143. 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.

**144. Administrative accounts of Trust**

- (1) Money the Trust pays to itself in accordance with section 149(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.

**145. Accounts and reports**

- (1) The Trust is to keep financial statements for all of its transactions.
- (2) By 30 September in each year, the Trust is to prepare the financial statements for the immediately preceding financial year ending on 30 June and have those statements audited by an auditor.
- (3) Within one month after receiving the financial statements of the Trust, the auditor must –
  - (a) report to the Trust whether, in his or her opinion, the requirements of the Act in respect of the handling of money by the Trust have been complied with or have not been complied with fully; and
  - (b) if the auditor finds that the requirements of the Act have not been complied with fully, specify in the audit report –
    - (i) the matters in respect of which there has not been full compliance; and
    - (ii) the extent of the non-compliance.
- (4) Within 7 days after receiving the audit report, the Trust is to give a copy of the audit report to –
  - (a) the Minister; and
  - (b) the Board.

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- (5) Without limiting the generality of section 170, 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.
- (6) 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.

**146. 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.



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*Division 2 – Schemes of arrangement*

**147. 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

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- (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(1) 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.

**148. 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 or a general auctioneer named in Part 3(1) 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.

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

**149. Property Agents Guarantee Fund**

- (1) The Trust must continue to maintain the Property Agents Guarantee Fund that was, immediately before the commencement of this section, continued in existence by virtue of section 164(1) of the repealed Act.
- (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.
- (3) Subject to this Part, the Guarantee Fund is to be applied by the Trust –
  - (a) for the purpose of compensating claimants in respect of claims allowed under this Part; and
  - (b) for legal or other expenses incurred in dealing with claims against the Guarantee Fund; and

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- (c) as agreed by the Board and the Minister under section 150.
- (4) The Property Agents Guarantee Fund is to be built up to and be maintained at –
  - (a) the amount of \$8 million; or
  - (b) such greater amount as may be prescribed.

**150. Use of surplus money in Guarantee Fund**

- (1) In this section –
  - surplus money*, in relation to the Guarantee Fund, means money in the Fund that exceeds the amount of \$8 million or the amount prescribed under section 149(4)(b).
- (2) Any surplus money in the Guarantee Fund is to be distributed, as agreed by the Board and the Minister –
  - (a) firstly, in the 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 (3); and
  - (c) thirdly, in the payment of costs incurred in administering the *Conveyancing Act 2004*.

- (3) The Board may use the money mentioned in subsection (2)(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.

**151. Administration of Guarantee Fund**

- (1) The Trust is to keep money in the Property Agents 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.

***Division 4 – Claims against Guarantee Fund***

**152. 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 –

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- (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(1) 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 Board 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 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.

**153. 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 152, 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 less 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.

**154. Manner and time for making application for compensation**

- (1) The Board is not to act on an application made to it under section 152 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 152 if a notice has been

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published in accordance with section 153, 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.

**155. Applicant for compensation to provide details of claim**

An application to the Board for compensation under section 152 is to be accompanied by –

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

**156. 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.

**157. Board to consider application**

- (1) The Board must, after considering an application for compensation made under section 152 –
  - (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 –

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- (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 within which an application for a review may be made and how, and to whom, notice of the review may be given.

**158. Recovery of claims under professional indemnity insurance**

- (1) Subject to subsection (2), the Board may, before making a determination under section 157(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.

**159. Trust to determine compensation payable**

The Trust must consider a recommendation made to it by the Board under section 157(1)(b) and must determine the amount of the compensation to be paid to the claimant.

**160. Notice of determination**

- (1) As soon as practicable after the Trust has made a determination under section 159, 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.

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- (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.

**161. 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 157(3); and
  - (b) the Trust is a party if the review is in respect of a determination under section 159.

**162. 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 is more than 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 160(1); or

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- (b) if the applicant applies for a review under section 161(2), on the determination of the review.

**163. 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.

**164. 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(1) 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 by the property agent;  
or

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- (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 11 – MISCELLANEOUS**

**165. Obstruction**

A person must not obstruct, threaten or intimidate a person who is performing a function or exercising a power under this Act.

Penalty: Fine not exceeding 1 000 penalty units.

**166. 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.

**167. Infringement notices**

- (1) In this section –



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***infringement offence*** means an offence against this Act or the regulations that is prescribed by the regulations to be an infringement offence.

- (2) The Board may authorise a person to issue and serve infringement notices for the purposes of this Act.
- (3) A person authorised by the Board under subsection (2) may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.
- (4) An infringement notice –
  - (a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
  - (b) is not to relate to more than 3 offences.
- (5) Any payments received in respect of an infringement notice are payable into the Consolidated Fund.
- (6) The regulations –
  - (a) may prescribe, for infringement offences, the penalties payable under infringement notices; and
  - (b) may prescribe different penalties for bodies corporate and individuals.

**168. Service of documents**

- (1) A document required by this Act to be given to, served on or sent to a property agent may be 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) 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 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.

**169. Confidentiality**

A person who obtains information in performing functions in the administration of this Act must not disclose the information unless the disclosure is made –

- (a) for the purposes of –
  - (i) this or any other Act; or

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- (ii) a law of another jurisdiction, whether Australian or not, that corresponds to the relevant provisions of this Act; or
- (b) with the consent of the person to whom the information relates; or
- (c) for the purposes of legal proceedings; or
- (d) in accordance with a requirement or authority made or conferred by law.

Penalty: Fine not exceeding 500 penalty units.

**170. Regulations**

(1) In this section –

*person* includes –

- (a) an Agency within the meaning of the *State Service Act 2000*; and
  - (b) a statutory authority; and
  - (c) any other body of persons, whether incorporated or not and whether an emanation of the Crown or otherwise.
- (2) The Governor may make regulations for the purposes of this Act.
- (3) Without limiting the generality of subsection (2), the regulations may –

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- (a) prescribe fees payable in respect of property agent licences; and
  - (b) provide for 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
  - (c) prescribe the fees to be paid to the Board on the production to the Board of audited accounts and records of trust money.
- (4) A fee that may be prescribed 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.
- (5) The regulations may prescribe a fee by –
- (a) specifying an amount; or
  - (b) specifying a rate or proportion by which the fee is to be calculated.
- (6) The regulations may –
- (a) provide that a contravention of a regulation is an offence; and
  - (b) provide for the imposition in respect of that offence of a fine not exceeding 500 penalty units.
- (7) The regulations may be made so as to –

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- (a) confer a discretionary authority on the Board or the Trust; and
  - (b) exempt a person or class of persons from the application of this Act or the regulations, or a provision of this Act or the regulations, either conditionally or unconditionally and either wholly or to such an extent as is specified; and
  - (c) apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (8) The Governor may make regulations of a savings or transitional nature consequent on the enactment of this Act.
- (9) Regulations under subsection (8) may take effect from the commencement of this section or on a later day.

**171. 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 Building and Construction; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

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**172. Savings and transitional provisions**

(1) In this section –

*commencement day* means the day on which section 3 of this Act commences;

*former Register* means the Register of Property Agents maintained by the Board before the commencement day under section 56 of the repealed Act.

(2) Where an application for registration or for the renewal of registration has been made under the repealed Act but has not been determined before the commencement day, the application is to be dealt with and determined by the Board as if the application had been made for a licence or for the renewal of a licence under this Act, and this Act is to apply to the application accordingly.

(3) A reference to –

(a) Part 1 of the Register in section 25(a) is taken to include a reference to Part 1 of the former Register; and

(b) Part 2 of the Register in section 26(a) is taken to include a reference to Part 2 of the former Register; and

(c) Part 3 of the Register in section 27(a) is taken to include a reference to Part 3 of the former Register; and

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- (d) a property manager in section 25(b)(ii) is taken to include a reference to a property manager under the repealed Act; and
  - (e) a property representative in section 25(b)(ii) is taken to include a reference to –
    - (i) an assistant property manager under the repealed Act; or
    - (ii) a property consultant under the repealed Act.
- (4) The following matters cease to have effect on the commencement day:
- (a) registration as a property agent under Part 4 of the repealed Act;
  - (b) a licence issued under section 62 of the repealed Act;
  - (c) an approval under section 17A or 17 B of the repealed Act.
- (5) A Tribunal established under Division 4 of Part 6 of the repealed Act, and in existence immediately before the commencement day, continues in existence as a Tribunal under this Act.
- (6) The Panel appointed by the Minister under section 115(1) of the repealed Act continues as the Panel appointed by the Minister under section 104(3) of this Act.

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- (7) If, immediately before the commencement day, a conduct complaint made to the Board under Part 6 of the repealed Act has not been dismissed, withdrawn or determined under that Part by either the Board or the Tribunal, that conduct complaint is to be dealt with under this Act as if it were a conduct complaint made to the Board under Part 7 of this Act.
- (8) If, immediately before the commencement day, an appeal to the Tribunal under Part 6 of the repealed Act has not been determined, that appeal is to be dealt with under this Act as if it were an appeal made to the Tribunal under section 116 of this Act.
- (9) Section 18(5)(a) and (b) do not apply in relation to a person applying for a property representative licence if –
  - (a) immediately before the commencement day, the person is a property consultant or an assistant property manager under the repealed Act and the person –
    - (i) is subject to an undischarged bankruptcy; or
    - (ii) 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; and



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- (b) the person has not, at the time of applying for the property representative licence –
  - (i) discharged the bankruptcy referred to in paragraph (a)(i); or
  - (ii) paid in full the composition or arrangement or fulfilled the terms of the composition or arrangement referred to in paragraph (a)(ii).

**173. Consequential amendments of regulations, &c., do not prevent their subsequent amendment**

The amendment by this Act of a provision of any regulations or order does not prevent that or any other provision of those regulations or order from being amended or rescinded by a subsequent regulation or order.

**174. Consequential Amendments**

The legislation specified in Schedule 4 is amended as specified in that Schedule.

**175. Legislation repealed**

The legislation specified in Schedule 5 is repealed.

**SCHEDULE 1 – MEMBERSHIP AND MEETINGS OF  
BOARD**

Section 5(5)

**PART 1 – MEMBERSHIP OF BOARD**

**1. Membership of Board**

- (1) 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.
- (2) 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.
- (3) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member of the Board.

**2. 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.

### **3. 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 subclause (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

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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.

**4. 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 fewer 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.

## **5. 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.

## **PART 2 – MEETINGS OF BOARD**

### **1. 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

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reasonable notice of the time and place of the meeting to the other members of the Board.

**2. 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.

**3. Procedure at meetings of Board**

- (1) A meeting of the Board has a quorum if 3 or more 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) Subject to this Act, the Board may regulate the conduct of its business as it thinks fit.
- (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.

#### **4. 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

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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 subclause (3).

**5. 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 performance or purported performance of a function under this Act.
- (2) A person who, in good faith, makes a complaint under Part 7 does not incur personal liability for loss, damage or injury that another person suffers as a result of the complaint being made.



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**SCHEDULE 2 – MEMBERSHIP AND MEETINGS OF  
TRIBUNAL**

Section 104(5)

**PART 1 – MEMBERSHIP OF TRIBUNAL**

**1. President of Tribunal**

- (1) 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.
- (2) 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.
- (3) The *State Service Act 2000* does not apply in relation to the President of the Tribunal in his or her capacity as President.
- (4) 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

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imprisonment for a term exceeding 12 months; or

(c) is convicted of an offence under this Act.

- (5) 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.

**2. Members of Panel**

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.

- (5) A member of the Panel holds office at the pleasure of the Minister.
- (6) A member of the Panel may resign from office by giving the Minister written notice of resignation.

## **PART 2 – MEETINGS OF TRIBUNAL**

### **1. 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.

**SCHEDULE 3 – MEMBERSHIP AND MEETINGS OF  
TRUST**

Section 141(6)

**PART 1 – MEMBERSHIP OF TRUST**

**1. Term of office**

A person appointed to be a member of the Trust holds office for 3 years.

**2. Vacation of office**

- (1) 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.
- (2) 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.

**3. Reappointment**

An appointed member of the Trust is eligible for reappointment.

**4. Holding other office**

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.

**5. State Service Act**

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.

**6. 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.

**7. 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.

## **8. 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 or estate 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.

## **9. Resignation by Trust members**

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

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**PART 2 – MEETINGS OF TRUST**

**1. Convening of meetings**

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. Presiding at meetings**

At a meeting of the Trust, 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.

**3. Quorum and voting at meetings**

- (1) Two members of the Trust constitute a quorum at a duly convened meeting of the Trust.
- (2) At the meeting of the Trust, the member of the Trust 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

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are present, unless a member of the Trust is excluded by virtue of clause 5, when the member presiding has both a deliberative vote and a casting vote.

**4. Procedure**

- (1) The Trust must keep a record of its proceedings.
- (2) Except as provided by this Act, the Trust may determine its own procedure.

**5. 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



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property agents or a particular group of property  
agents generally.

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**SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS**

Section 174

***Australian Consumer Law (Tasmania) Regulations 2012***

1. Schedule 1 is amended by omitting item 6 and substituting:
6. *Property Agents and Land Transactions Act 2016*

***Conveyancing Act 2004***

1. Section 3(1) is amended by omitting “section 162 of the *Property Agents and Land Transactions Act 2005*” from the definition of *approved institution* and substituting “section 147 of the *Property Agents and Land Transactions Act 2016*”.
2. Section 5(1)(e) is amended by omitting “*Auctioneers and Real Estate Agents Act 1991*” and substituting “*Property Agents and Land Transactions Act 2016*”.
3. Section 14(2) is amended by omitting “section 94(1) of the *Auctioneers and Real Estate Agents Act 1991*” and substituting “section 152 of the *Property Agents and Land Transactions Act 2016*”.

***Justices Order 2004***

1. Clause 4(ra) is amended by omitting “*Property Agents and Land Transactions Act 2005*” and substituting “*Property Agents and Land Transactions Act 2016*”.

***Legal Profession Act 2007***

1. Section 13(2)(j) is amended by omitting “*Property Agents and Land Transactions Act 2005*” and substituting “*Property Agents and Land Transactions Act 2016*”.

***Residential Tenancy Act 1997***

1. Section 25(2)(b) is amended by omitting “*Property Agents and Land Transactions Act 2005*” and substituting “*Property Agents and Land Transactions Act 2016*”.

***Second-hand Dealers and Pawnbrokers Act 1994***

1. Section 3(1) is amended by omitting “*Property Agents and Land Transactions Act 2005*” from paragraph (a) of the definition of *second-hand dealer* and substituting “*Property Agents and Land Transactions Act 2016*”.

***Security and Investigations Agents Act 2002***

1. Section 41(1)(i) is amended by omitting “*Property Agents and Land Transactions Act*”

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2005” and substituting “*Property Agents and Land Transactions Act 2016*”.

***Shop Trading Hours Act 1984***

1. Section 3A(3)(a) is amended by omitting “*Property Agents and Land Transactions Act 2005*” and substituting “*Property Agents and Land Transactions Act 2016*”.

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**SCHEDULE 5 – LEGISLATION REPEALED**

Section 175

*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)