

## **DRAFT SECOND READING SPEECH**

**HON. GUY BARNETT MP**

### ***Property Agents and Land Transactions Bill 2016***

*\*check Hansard for delivery\**

Madam Speaker,

The *Property Agents and Land Transactions Bill 2016* is in line with the State Government's election commitments to make Tasmania more attractive for economic investment and to further jobs creation. This Bill supports these commitments by delivering greater certainty to the real estate industry, as well as backing small business, supporting retailers and promoting greater accessibility to affordable housing for all Tasmanians.

The property agents industry is currently experiencing high levels of business confidence, and is recording strong performance in sales and retail spending. The real estate market that has lain dormant for more than half a decade is now seeing an influx of investors from interstate and overseas who are choosing to stay in Tasmania. These factors are helping to reverse the long-term trend of housing decline.

In this environment of record growth, this Government recognises the significant contribution that this important industry makes to the State's economy. In 2015 alone, there were nearly 1600 property agents operating across Tasmania. To ensure that this industry continues to grow and operate efficiently, it is therefore considered timely to review the legislative framework.

As such, a review into the *Property Agents and Land Transactions Act 2005* and supporting regulations has been underway since June 2015. This review is in response to a general call for reform from industry, primarily from the Real Estate Institute of Tasmania as the peak industry representative body, and the Regulator, the Property Agents Board of Tasmania. These key bodies, with the support of industry, expressed concerns that the current regulatory regime did not adequately provide for the needs of real estate practitioners, and a number of areas could be identified where reform would improve outcomes for both consumers and service providers.

These key stakeholders, as well as market participants, customer advocates and relevant Government agencies, have been involved in an extensive consultation process across late 2015 and early 2016. As part of this process, a Regulatory Impact Statement was prepared and released to stakeholders for comment, which sets out the proposed options for reform and assessed the impacts that these changes would have on industry and the wider community.

The primary object of the review and the Regulatory Impact Statement process was to identify unnecessary red tape within the existing legislative requirements, and ensure that Tasmanian

real estate practitioners have clarity in regard to their responsibilities as to roles, conduct, training and continuing professional development. The review also incorporated the Government's annual submission in early 2015 to agree, along with the Property Agent's Board, as to how to spend the surplus funds in the Property Agents Guarantee Fund.

Madam Speaker, as a result of the outcomes of this review and extensive consultation process, the Bill replaces the *Property Agents and Land Transactions Act 2005* by providing a best practice solution to current gaps and weaknesses in the legislative framework regarding roles, conduct, training and professional development of real estate practitioners. The Bill facilitates red tape reduction by removing the un-commenced Part 10, which relates to vendor disclosure and cooling-off requirements. Further, the Bill introduces a new licensing regime, and improves the ability for tenants and owners of residential properties to make claims for recovery of any loss against the Property Agents Guarantee Fund.

These changes will provide cost savings to both consumers and the industry, and will result in the continual increase in industry and professional standards. These improvements will benefit everyone in the Tasmanian community.

I will now discuss each of the changes in further detail.

While the Property Agents and Land Transactions Act has been reviewed previously, it has remained largely unchanged since its introduction. When the Act was enacted, Part 10 was excluded from its operation due to strong opposition by industry and significant difficulties in reaching agreement as to how identified issues should be addressed. These provisions relate to vendor disclosure and cooling-off periods. An amendment Act, the *Property Agents and Land Transactions Amendment Bill 2009*, was introduced to Parliament which attempted to address the concerns raised by industry in relation to this part of the Act. However, despite the extensive consultation conducted at the time, legal advice indicated the provisions were still problematic and were not acceptable by either industry or the Tasmanian law society. This failure of trying to rectify the concerns of industry, resulted in Part 10 remaining un-commenced.

A further attempt was again made to implement vendor disclosure and cooling-off periods, through the *Residential Property Transactions Bill 2013*. This Bill included a repeal of Part 10 of this Act, and replaced the provisions by creating a system of vendor disclosure based on the provision of third party documents. The Bill also created a range of implied contractual terms for contracts for the sale of residential property. The Bill was only read for the first time in This House, before it was withdrawn. Once again, there was strong opposition from industry as to the approach adopted in the Bill to address the matter of vendor disclosure and cooling-off contractual requirements.

Following the 2014 State election, the Law Society of Tasmania committed to working with Real Estate Institute of Tasmania (REIT) to develop a Standard Form Contract for the Sale of Residential Real Estate, as an industry-led approach to address these matters. It was proposed that it could incorporate a suite of consumer provisions, including cooling-off provisions, while retaining the ability of parties to negotiate contractual provisions.

Due to this work progressed by industry and the legal profession, this Bill removes the contentious Part 10 as it does not reflect the current operations and expectations of the industry.

The Bill also introduces a universal licensing system and continuing education requirements for property agents. This proposal has substantial support, as it is something that has been called for by industry bodies and the Regulator for some time.

The new licensing system will provide a number of benefits to property agents and the Tasmanian community, including the creation of a public, central and up-to-date register of all property agents, which accounts for everyone working in the industry. The Register will include contact and licence information of every property agent licenced in Tasmania, as well as whether a licence has been suspended or cancelled. This will act as a deterrent for property agents doing the wrong thing.

One of the main changes as a result of introducing licensing, is the reduction of the number of property agent occupation types from five to four: real estate agents, property managers, general auctioneers and property representatives. The merging of the current assistant property managers and property consultants, to a single occupation type called 'property representatives' will allow smaller businesses to more readily comply with the Act and reduce a number of administrative burdens that currently exist by having the two employment types separated. People who are employed in either of these two former roles, can now extend their skills to cover both sales and property management – a move which will assist many smaller property agent businesses in Tasmania to conduct day-to-day operations. This reduction not only reduces administrative burdens for industry, but will assist the regulatory functions of the Property Agents Board.

Ongoing educational requirements for licence renewals will also provide the ability for employers to verify qualifications and past employment, as well as allow the Property Agent's Board to prevent a property agent's qualifications and licence from lapsing. As well as raising awareness of relevant laws and practices within the property agents industry, it will also benefit Tasmanian consumers in the long run by ensuring the industry keeps pace with technology advances and changes in best-practice methods, which will result in less complaints and increased compliance with the Act.

These measures will ensure that property agents not only meet current professional requirements, they will ensure that there is continual improvement of industry standards, in alignment with community expectations. This is an important consumer protection in the Bill.

One of the important benefits of introducing a licensing regime is that it will also allow for the mutual recognition of Tasmanian property agents across other Australian States and Territories. The ability for property agents to be recognised interstate through Mutual Recognition, a process which has been available to a large number of other occupations for some time now, is a long-anticipated outcome the property agents industry has been calling for. Tasmanian property agents will now be able to apply to work interstate without the administrative hurdles

and costs associated with a lack of mutual recognition, such as having to re-sit courses or lengthy application process, just to gain qualifications that are recognised by other jurisdictions.

Madam Speaker, the Bill introduces an increased ability for consumers to claim from the Property Agents Guarantee Fund. These reforms improve the ability for tenants and owners of residential properties to make claims for recovery of any loss against the Property Agents Guarantee Fund, or against a property agent's professional indemnity insurance. There is no provision under the current arrangements for these consumers to access the compensatory fund, which is a significant disadvantage for consumers in this sector of the industry.

Consequently, there is significant support to provide property owners and tenants the ability to apply for compensation from the Property Agents Guarantee Fund. This Guarantee Fund is funded by the interest on consumer funds held in trust during the sale of property, and is meant to be available to consumers who are out of pocket due to Property Agents misusing money given to them in trust. It is consumer funded and is used to benefit consumers. One of the fundamental changes to the Trust arrangements is to clarify that the Trust Fund applies to both sale and rental property money accepted by Property Agents.

Currently, a number of entities receive funding from the Property Agents Guarantee Fund surplus in order to pay for the costs of administration and operational requirements, including the Property Agents Board, the Rental Deposit Authority, the Residential Tenancy Commission and the rental disputes division of the Magistrates Court of Tasmania. All of these bodies contribute to consumer protection and therefore are rightly funded in this way. The Property Agents Board claims funds to provide for education of license holders, another important consumer protection.

All of these uses of the Guarantee Fund surplus are continued in the Bill.

The Bill amends the distribution arrangements by increasing the minimum balance of the Fund from a balance in excess of \$3 million, to a balance in excess of \$8 million. This is in line with actuarial advice provided to the Regulator, as the calculated figure to hold sufficient funds to cover disbursements. Under this approach, the Minister retains the reserve power to increase this minimum as required.

In addition, there are changes to the membership of the Trust. Currently, the Chair of the Board is also the Chair of the Trust. The Bill separates these two entities by fostering corporate independence and ultimately, limiting conflict. The Chair of the Trust will now be independent of the Board, which will promote balance and transparency. In addition to these changes, there will be further clarifying of reporting requirements from the Board and the Property Agents Trust regarding the processes for utilising the surplus in the Property Agents Trust's Property Agents Guarantee Fund.

Madam Speaker, as I have previously stated, the continual improvement of the industry has invaluable flow on effects to the Tasmanian community. These changes to the Guarantee Fund allow for efficient and timely distributions for these purposes, while ensuring that sufficient funds

remain available in the Fund to support all relevant entities that regulate and administer the industry.

Madam Speaker, the Bill introduces a number of other important changes, such as the fixing of contractual timeframes for the appointment of real estate agents. There will be an introduction of new timeframes in written contracts for property agents, particularly real estate agents. This will be of benefit to both consumers and the industry, as the reduction of the complexity of written contracts and definitive timeframes will result in less confusing contracts. Written termination of contracts will be for not more than 30 days. Contracts for appointments of a property agent, that is, agency agreements, will be capped at 120 days from the day that the agreement is signed.

Also introduced is a new provision that vendors may be responsible for commissions if, within 90 days after the expiry or termination of the contract, they sell the specified property to a purchaser that was introduced to the vendor by the real estate agent. These circumstances are deemed to have the effective cause of sale. Industry has long sought provisions to deal with this situation, as it is an increasing occurrence that vendors use an agent to set up a sale and then go on to complete the sale by themselves to avoid paying commission. This change, coupled with the new definitive timeframes, ensures that no one is taken advantage of in the property agent/client relationship, which benefits both consumers and property agents alike.

The Bill also modernises provisions dealing with advertising and publishing. This is to take in account developments with respect to social media advertising where certain important identifying factors of property agents are either left out or not correctly represented. The current Act is deficient in this respect. In relation to publishing, the Bill now contains provisions dealing with publishing, including by the internet. False or misleading advertising provisions mirror those of the Australian Consumer Law.

The Bill extends the powers of the Property Agents Board, as the Regulator, through improved complaints procedures, such as providing support in the resolution of disputes relating to the conduct of property agents. There are also improvements made for increased compliance measures, such as introducing an infringement system. The Bill removes the current onerous requirement to maintain rolling registers with consistent periods for renewal of licensing that will be based on financial years, and has made it easier for the Board to amend or update the property agent's Code of Conduct.

The Bill also ensures that the Property Agents Tribunal processes are better correlated with those of the Magistrates Court of Tasmania, by simplifying the review and appeals processes. For example, the current arrangements allow for duplicated appeal times of 14 days, 21 days, 28 days or within such further period as the Tribunal considers is appropriate in the interest of justice. These time have now been simplified to a single appeal time period to the Tribunal of 14 days. The Review of any of the Tribunal's decisions will continue to be governed by the *Magistrates Court (Administrative Appeals Division) Act 2001*.

Madam Speaker,

This Bill provides a best practice solution to roles, conduct, training and professional development. New licensing requirements across all property agent occupations will acknowledge the roles, responsibilities and the need for training and continuing development of all property agents within the real estate industry. Licensing across all levels will better facilitate mutual recognition with other jurisdictions, which has been identified by the industry as a problem in the present system. The overall reduction in complexity of regulation will result in less confusing contracts, more efficient complaints procedures and laws that complement the use of new technologies for advertising, publishing, accounting, reporting and storing records. Implementation of these provisions is supported by industry. The Bill simplifies processes concerning the Property Agents Trust, the Property Agents Guarantee Fund and professional indemnity insurance. The Property Agents Guarantee Fund and its surplus funds will be more efficiently managed, to the benefit of both consumers and industry.

The range of measures in this Bill will generate cost savings for the community, bring Tasmania into line with jurisdictions interstate with licensing aiming to facilitate easier recognition with other jurisdictions, introduce an efficient register of licences, reduce complaints and improve the effectiveness of the real estate industry in Tasmania.

I commend this Bill to the House.