

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Property Agents and Land Transactions Bill 2019

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Madam Speaker, I move that the Bill now be read a second time.

The *Property Agents and Land Transactions Act 2016* has now been in operation for three years.

It is timely to review its operation and ensure it is as effective and efficient as possible.

For this reason I bring before the House today a small number of improvements that have been identified by the Property Agents Board to streamline operations and reduce red tape.

The Property Agents Board is the regulator for the *Property Agents and Land Transactions Act 2016* so is best placed to comment on what's working well and identify any opportunities to improve the way we regulate the industry.

Amendments proposed by the Property Agents Board have been discussed with the major stakeholder, the Real Estate Institute of Tasmania, and confirmed as being of value to the industry.

The proposed amendments include the following changes which I will now outline:

This Bill clarifies that a person may not carry out the functions of a real estate agent or property manager unless they hold the appropriate licence.

Section 34 of the *Property Agents and Land Transactions Act 2016* states that "a person must not carry on all or any part of real estate agency business...unless he or she is a real estate agent..."

Similarly section 35 prohibits a person from carrying out any part of a property management business unless he or she is a licensed property manager.

By omitting the words "business that includes carrying out" and substituting "the carrying out of", there can be no doubt, if a person is performing any of these functions without holding the appropriate licence.

Madam Speaker, this Bill also seeks to clarify that real estate agents and property managers are able to contract out their services to a real estate or property management business.

This business model is preferred by some licensees, whereby they are not directly employed by a business but operate independently on a contract basis.

The legislation currently allows property representatives to do this but the same opportunity is not afforded to real estate agents and property managers.

This amendment addresses this inequity.

Madam Speaker, in Tasmania, we take the professionalism of the real estate industry seriously. By ensuring people who work in the industry are appropriately qualified, we are offering a high level of protection to both employees and the consumers who engage with them.

The Property Agents Board ("the Board") has identified a number of training courses that are part of the National Training Package that provide an appropriate level of qualifications to the industry.

The Board has therefore recommended that completion of the appropriate training course be a legislated requirement for holding a licence.

Because such courses are subject to regular review, this Bill proposes an amendment to the powers of the Property Agents Board, as Regulator of this Act, to allow the making of a legally binding determination with details of appropriate training and qualifications for each licence category in alignment with the National Training Framework.

By using this legislative instrument, changes can be made, if required, without the need to amend the legislation when requirements or course offerings change.

A new provision is to be inserted to make the licensee directly responsible for notifying the Board if the details on the licence change – including the name, address or contact details.

It's important for the Regulator to be able to contact all people licensed in the industry to ensure they are kept up to date with professional development opportunities and any changes to the Act.

This change will contribute to ensuring contact details are current.

Madam Speaker, the privacy of licence holders should be protected. Currently, section 29 of the Act requires the Board to maintain a register of Property Agents, which is published on its website, including the name and address of each real estate agent, property manager, general auctioneer and property representative.

This could be taken to mean that the personal residential address of these individuals must be included in the Register, whereas the intention was always that this be the business address.

Therefore, this is clarified in the amended legislation.

Madam Speaker, the Board considers that every real estate agency business should identify an individual who is responsible for the management of the business. This will ensure there is someone who can be held accountable if any concerns are raised about the way in which a business is being managed.

To achieve this, it is proposed that sections 36(1)(b), 37(1)(b) and 60(1)(b) be amended to include the words "a natural person who is" after "managed by", for example "managed by a natural person who is a real estate agent".

Madam Speaker, the professionalism and trustworthiness of the real estate industry is important. The purchase of a home or business premises is one of the most significant expenditures many people will make in a lifetime.

And yet there have been occasions where the full facts were not made available to the prospective purchaser.

Currently it is an offence under the Act if an agent or auctioneer knowingly provides false or misleading information to a client.

The Board considers that the requirement to “know” information is false is too high a level of protection to the property agent and that the Act should allow for a defence that an agent or auctioneer reasonably relied on information supplied by a third party in making the representation.

Madam Speaker, this Amendment Bill also streamlines some basic administrative processes, such as introducing email as an acceptable means of servicing documents. Electronic communication as a means of service is acknowledged in the Court jurisdictions. For example, rule 7.07 and rule 7.16 of the *Family Court Rules 2004*, and rule 79 and rule 144 of the *Tasmanian Supreme Court Rules 2000* both allow for service via email.

The current Act requires the Code of Conduct to be printed and issued to all licensees whenever a revision is made. It is proposed that other methods be allowed, such as distributing the revised Code by email and by making it available on the Board's website.

A printed copy of the Code of Conduct will still be available to licensees and members of the public for perusal in the public office of the Board.

The Bill also removes an obsolete provision that was included to ensure no assistant property manager was disadvantaged during the transition to the new Act in 2016. This provision has expired and is no longer required.

Madam Speaker, the Property Agents and Land Transactions Amendment Bill 2019 makes sensible and practical amendments to an Act that is already delivering for the industry.

Madam Speaker, I commend the Bill to the House.