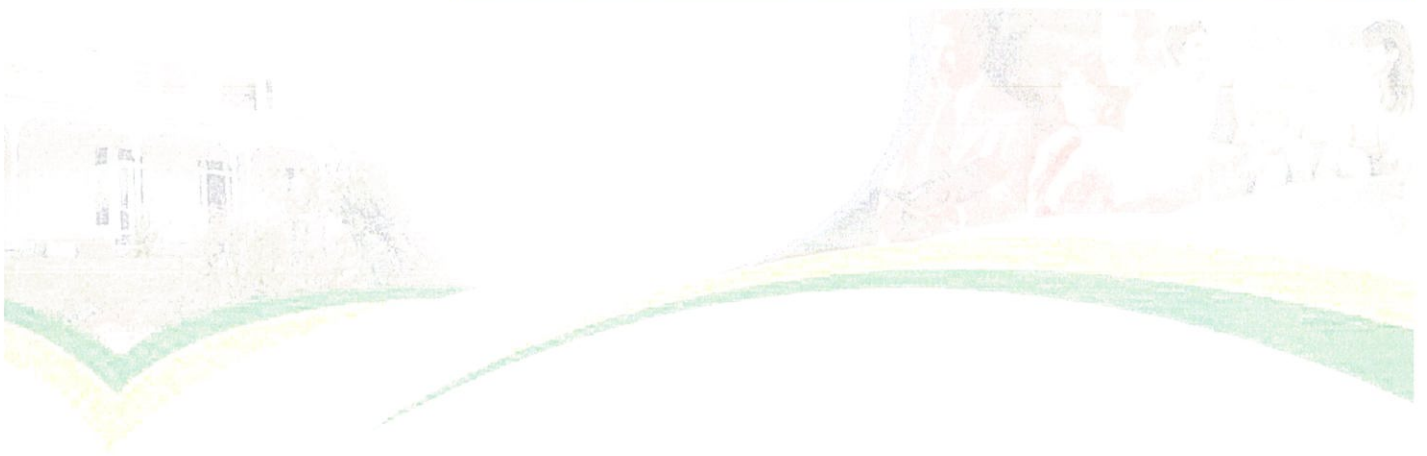


PROPERTY AGENTS BOARD

Annual Report
2011-2012



Statement of Compliance

Hon N McKim MP
Minister for Corrections and Consumer Protection
Level 9
Marine Board Building,
1 Franklin Wharf
HOBART TAS 7000

Dear Minister

In accordance with Section 92 of the *Property Agents and Land Transactions Act 2005*, (the Act) we submit for your information and presentation to Parliament the Annual Report of the Property Agents Board for the year ending 30 June 2012.

The Report has been prepared in accordance with the provisions of the Act.



John Upcher

Chairman
Property Agents Board
2 Davey Street
Hobart Tas 7000

Organisational profile

The Property Agents Board is an independent statutory authority established under *the Property Agents and Land Transactions Act 2005* (the Act) to regulate the real estate industry. The Board administers the Act, the *Property Agents and Land Transactions Regulations 2006* (the Regulations) and the Code of Conduct developed in accordance with Section 82 of the Act.

The Board acts as the supervisory authority for property agents in Tasmania. The stated object of the Act is to regulate property agents and certain auction and real estate practices. "Property agent" is defined by the Act to mean a real estate agent, a property manager, a general auctioneer, an assistant property manager or a property consultant.

The duties of the Board are set out in Section 81 of the Act and include:

- a) to maintain the Register in accordance with the Act, which involves ensuring that only people who have the necessary experience and qualifications to do so and are not otherwise unfit to do so, are permitted to act as property agents;
- b) to administer the approval of qualifications for property agents;
- c) to ensure that property agents comply with the requirements of the Act relating to their conduct in carrying on their businesses or in carrying out their functions and, where they fail to do so, to take such appropriate disciplinary action to protect the interests of the public and to discourage such conduct;
- d) to ensure that people who are not permitted under the Act to do so do not act as property agents;
- 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 supervise the trust accounts of 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 of the Register;
- h) to advise property agents on appropriate standards of conduct;
- i) to monitor, identify and report to the Minister trends and issues that emerge within the property agents industry;
- j) to carry out educational functions in relation to the property agents industry;
- k) to advise the Minister on matters relating to the Act including its efficacy and on any other matters relevant to the Board's functions or to the property agents' industry; and
- l) to carry out any other function imposed on the Board by the Act or any other Act.

To carry out these duties the Board may: -

- give advice to the Minister with regard to the regulation of the real estate industry;
- make recommendations regarding rules and regulations etc. relating to –
 - the handling of trust money;
 - courses of instruction and examinations; and
 - the professional conduct of property agents;
- refer alleged serious breaches of the Act, Regulations or Code of Conduct to the Property Agents Tribunal;
- issue or refuse the registration of real estate agents, property managers and general auctioneers;
- cause to be inspected and audited the trust accounts of general auctioneers, property managers and real estate agents; and
- establish, administer and process claims against the Property Agents Guarantee Fund.

The Board seeks to achieve:-

Accountability: The Board aims to serve the needs of the public in a professional, responsible and accountable manner.

Integrity: The Board seeks to deal with its members and staff, with the industry and the public on the basis of trust, understanding and respect for differing views and interests. The Board aims to perform its functions in a fair and transparent manner.

Professionalism: The Board endeavours to perform its services to the best of its ability with optimum use of resources at its disposal and with a focus on continuously improving quality, productivity and professional development.

Responsiveness: The Board endeavours to provide high quality information and services to the government, industry and the public.

Integrity of Registration: The Board monitors the qualifications of those seeking to enter the real estate industry and those already registered or qualified.

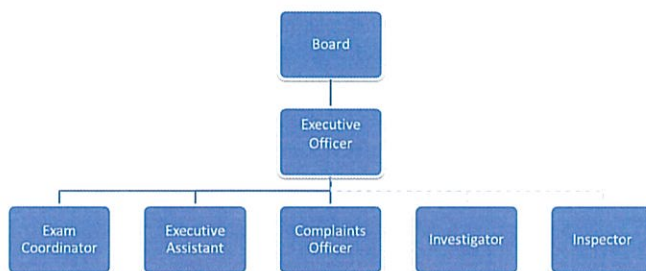
Compliance: The Board endeavours to ensure that property agents comply with the relevant legislation and trust account reporting requirements.

Education and Awareness: The Board's aim is to encourage awareness of "best practice", through activities such as inspections, continuing education, publications and through the Board's website.

BOARD STRUCTURE

The composition of the Board is set out in Section 71 of the Act. There are five members of the Board of which the Chair must be a legal practitioner of at least five years standing who has legal experience in areas of law relevant to the position, two members who must be property agents who have at least five years' experience as property agents (one of whom is nominated by the body representing the property agents industry), and a further two members who must not be property agents.

Organisational Chart



Board Members

The members of the Board are:

John Upcher - Chairman

Mr John Upcher recently retired after having been a senior legal practitioner practising for over 40 years in the areas of commercial and property law as well as wills and estate planning. Mr Upcher is also a member of the Legal Profession Board of Tasmania.

Mr Upcher was reappointed as Chair of the Board on 26 July 2010.

John Soundy - Member

Mr John Soundy is a leading Real Estate Agent and Auctioneer with experience in large, small and franchised offices. A former President of the Real Estate Institute of Tasmania and current State Executive member, he has been involved in the Industry's side of the current legislation development since its commencement. Mr Soundy was reappointed to the Board on 26 July 2010.

Ian Wells - Member

Mr Ian Wells is a Real Estate Agent, Auctioneer and Land Valuer. He is a Fellow of the Real Estate Institute of Australia and a Fellow of the Australian Property Institute.

He is a past National President of the Real Estate Institute of Australia and was reappointed to the Board on 26 July 2010.

Belinda Webster—Member

Ms Belinda Webster is Director of Governance & Legal at the University of Tasmania. She has 15 years experience working with Parliamentary Counsel. Ms Webster is also a member of the Osteopathy Board of Australia and Pharmacy Board of Tasmania.

Ms Webster was appointed to the Board on 4 July 2011.

Kim Backhouse—Member

Ms Kim Backhouse has been employed as a legal practitioner since 1995. She worked at the Ombudsman's Office for 9 years as a Senior Investigations Officer.

Ms Backhouse is Chair of the Disciplinary Panel for the Chiropractic and Osteopathic Registration Board and Chair of the Code of Conduct Panel for Alderman at the Clarence City Council.

Ms Backhouse was appointed to the Board on 4 July 2011.

Board member attendance at meetings for 2011-2012.

Meeting Date and Number	J Upcher	J Soundy	I Wells	B Webster	K Backhouse
27 July (50th)	x	x	x	x	x
15 August (51th)	x	x	absent	x	x
14 September (52st)	x	x	x	x	x
19 October (53rd)	x	x	x	absent	x
9 November (54th)	x	absent	x	x	x
14 December (55th)	x	x	x	x	x
8 February (56th)	x	x	x	x	x
14 March (57th)	x	x	x	absent	x
18 April (58th)	x	x	x	x	x
13 June (59th)	x	x	x	x	x
Meetings attended	10	9	8	8	10

Board Staff

During 2011—12 the Board directly employed four staff:

the Executive Officer;

a part-time Executive Assistant;

a part-time Complaints Officer; and

a part-time Exam Coordinator.

A Board Inspector is engaged on a part-time basis and conducts state wide inspections of the trust accounts of general auctioneers, real estate agents and property managers. The Board also engages appropriately qualified persons to conduct investigations into conduct complaints.

Executive Officer

The Executive Officer of the Board is responsible for providing advice and assistance to the Board in its day-to-day operations. The Executive Officer is also responsible for ensuring that the Board's policies and strategies for regulating the property industry are implemented and monitored.

The Executive Officer is required to ensure the overall efficient operation of the Board and staff in the administration of the Act, the Regulations and the Code of Conduct, and to report to the Board on policy, legislative and operational issues that may have impact on the Board's operations or its ability to meet its legislative duties and functions.

The Executive Officer endeavours to build and maintain a cooperative and effective working relationship with the Minister's office and industry and consumer organisations, to develop and maintain contacts with similar regulatory authorities throughout Australia, and to represent the Board at conferences and seminars, and on relevant committees and working parties.

The Executive Officer briefs external counsel to provide advice or legal representation where necessary, and oversees financial and human resources.

The Executive Officer is also the Registrar of the Property Agents Tribunal, Secretary of the Property Agents Trust, Secretary of the Scholarship Board and the Board's RTI Officer.

Executive Assistant

The Executive Assistant of the Board is responsible for providing assistance to the Executive Officer in running the Board's day-to-day operations. She provides the initial point of contact for face-to-face and telephone enquiries, manages correspondence, maintains the statutory database and tracks legislative compliance of property agents.

Complaints Officer

The Complaints Officer conducts assessments and prepares reports and initial action for the Board regarding complaints.

As directed by the Board, the Complaints Officer conducts investigations, or facilitates more complex investigations, and prepares reports on investigations for the Board.

The Complaints Officer is required to maintain effective communication and relationships with complainants and other parties, including the preparation of necessary correspondence and dealing with telephone enquiries relating to complaints.

Exam Coordinator

The Exam Coordinator is responsible for the management of the exam process for property consultants and assistant property managers. This officer coordinates the examination venues and exam supervisors, maintains a list of candidates, prepares all papers and distributes them to regional locations. The Exam Coordinator also grades examinations, notifies candidates of results and maintains a register of examination results.

Board Finance

The Board is funded by the industry, in the form of registration revenue, and interest earned on retained funds.

The Board's financial reporting is prepared in accordance with Australian Accounting Standards.

Financial statements are provided to and reviewed by the Board on a monthly basis. The financial reporting includes analysis of income and expenditure to budget and a comparison with the previous year's figures.

Registrations

All real estate agents, property managers and general auctioneers require registration in order to carry on business in Tasmania. The registration effected by the Board must be renewed every year.

The Board assesses registration applications to ensure that only suitably qualified people enter the industry as registered property agents. The Board assists people seeking to obtain or renew a registration and to process applications in accordance with the Act.

While there is no registration of property consultants or assistant property managers, these categories of employees in real estate or property management businesses must be qualified before entering either of the industries by successfully completing the examination administered by the Board.

A purpose-built database is used to record registrations.

During the reporting period, the Board received and processed a total of 499 applications from real estate agents, 2 for property manager registrations and 12 for general auctioneers. The figure for real estate agents is slightly lower than 2010-11 (520). Details of applications processed are as follows:

Registrations	2011-2012		2010-2011		2009-2010	
	new	renewal	new	renewal	new	renewal
Real Estate Agent (Part 1 Division 1)	30	154	21	162	42	154
Real Estate Agent (Part 1 Division 2)	48	267	48	289	64	245
Property Manager (Part 2 Division 1)	1	1	1	1	0	1
Property Manager (Part 2 Division 2)	0	0	0	0	0	0
General Auctioneer (Part 3 Division 1)	3	9	2	10	1	8

Registration Fees

Fees for application and registration of property agents (inclusive of Goods and Services Tax)		
Application fees	Company	\$272.30
	Individual	\$136.15
Registration fees	Real Estate Agent Part 1 Div 1	\$408.40
	Real Estate Agent Part 1 Div 2	\$136.15
	Real Estate Agent, additional fee for each Property Consultant or Assistant Property Manager	\$68.80
	Property Manager Part 2 Div 1	\$341.10
	Property Manager Part 2 Div 2	\$136.15
	Property Manager, additional fee for each Property Consultant or Assistant Property Manager	\$68.80
	General Auctioneer Part 3	\$408.40
	General Auctioneer, Director of a company	\$136.15

Applications and Objections

The Board received 16 applications during the reporting period for a real estate agent to manage more than one authorised place of business. The sixteen were approved; however 2 were approved for 3 months and 4 were approved for six months at which time the real estate agent was requested to re-apply. This number of applications was an increase over the 2010-11 figure of 12.

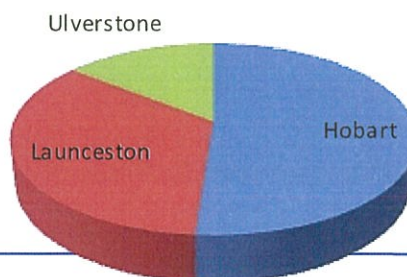
No objections were received by the Board with regard to a property consultant or assistant property manager entering the real estate industry.

Examinations

Regulation 42 provides that the qualification required for a property consultant or assistant property manager is the successful completion of an examination administered by the Property Agents Board.

The Board conducts exams in Hobart, Launceston and Ulverstone each month to service each region of the State.

Exams sat by Region



Exam questions are based on the following areas:-

All candidates

- Real Estate and Property Management – Basic Concepts
- Property Agents and Land Transactions Act 2005 – general understanding
- Property Agents and Land Transactions Regulations 2006 (including the Code of Conduct)
- Contract Law – Basic concepts
- Australian Consumer Law – general understanding
- Agency and Property terms and definitions
- Trust Accounting – Basic concepts

Property Consultants

- Selling – general understanding
- Land Titles, Documents, Land Transfer legislation & Forms of Occupancy, land classification
- Sales Documentation
- Trust Accounting – dealing with funds
- Types of agency agreements

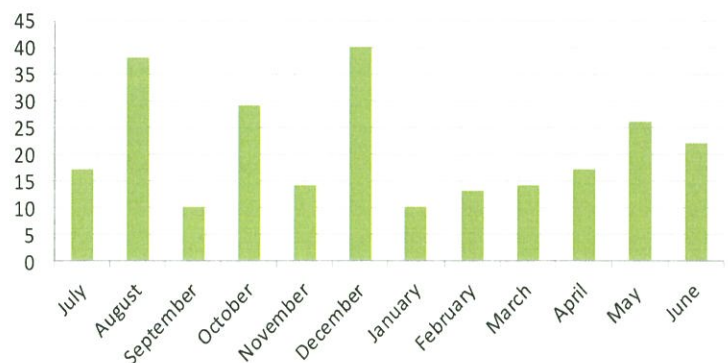
Assistant Property Managers

- Property Management -general knowledge
- Documentation – Management Authority, Residential Tenancy Agreement, Condition Reports, Inspection Reports
- Property Management Processes
- Property Investments
- Trust Accounting - general understanding

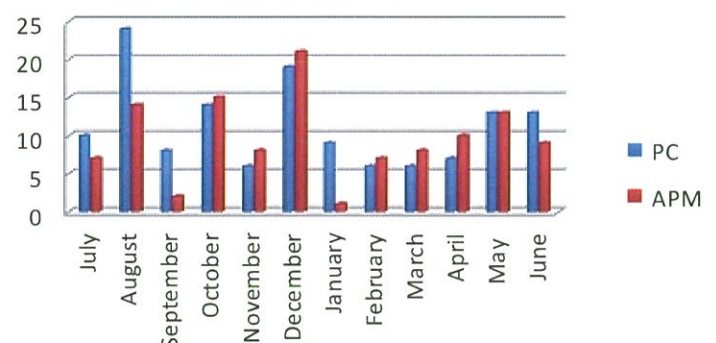
250 examinations were conducted by the Property Agents Board in 2011-12.

Of those examinations, 115 were to gain qualification as an Assistant Property Manager and 135 for a Property Consultant qualification.

Total Examinations by Month



Examination by Type



Success Rate



Conduct

The Board strives to ensure:

- all property agents comply with the requirements of the Act, Regulations and Code of Conduct;
- complaints are investigated promptly and dealt with by the Board in a timely manner;
- prompt accurate advice is given to industry members and the public; and
- audit reports and trust account reports are received on time and all qualified reports are investigated.

Compliance issues

The Board has obtained a number of interpretive opinions with regard to administering the *Property Agents & Land Transactions Act*. These included opinions as to:

- advice as to possible improvement of the “complaint” provisions of the Act;
- the provisions of Sections 29;
- the provisions of Section 18 and in particular the termination provisions in agency agreements;
- the provisions of Rule 7 in the Code of Conduct;
- the application of Rule 8 (b) in the Code of Conduct; and
- the provision of Section 23.

Conduct complaints procedures

A complaint may be made about the conduct of a property agent by any person. The complaint must be in writing. A complaint form been designed to assist the complainant identify the particular concerns being complained about.

When a complaint is received by the Board, a copy of the complaint is sent to the property agent seeking an explanation as to the conduct complained about. Once a response is received, the property agent’s explanation is provided to the complainant for further comment.

The complaint is then assessed and particularised by the Board’s Complaint Officer and the material is considered by the Board which decides whether the complaint is to proceed to investigation or should be dismissed.

On the completion of an investigation, if the Board considers that the evidence it has is that the conduct only amounts to minor misconduct, the Board need not refer the complaint to the Tribunal, and may deal with the complaint itself pursuant to Section 109. If the Board is satisfied that there is sufficient evidence to substantiate the complaint, and it is not minor misconduct, it must refer it to the Tribunal.

Complaint Handling

The following statistical information regarding conduct complaints is based on the twelve month period, 1 July 2011 to 30 June 2012.

32 conduct complaints were received; 15 complaints were resolved and 17 complaints remain to be resolved.

Complaints received by Month



The Board recognises the importance of dealing effectively with complaints especially at the initial enquiry stage. There is an opportunity, on occasion, to resolve a problem before it results in a formal complaint. The majority of complaint enquiries are dealt with by telephone. Dealing with enquiries in this way represents a significant part of the workload of the Board's Officers.

On average 28 telephone complaint enquiries are received each calendar month.

Action taken - Complaints 2011-2012

Of the 15 complaints determined this year, 4 matters were dismissed pursuant to Section 98 as the Board was satisfied that the complaint was vexatious, misconceived, frivolous or lacking in substance.

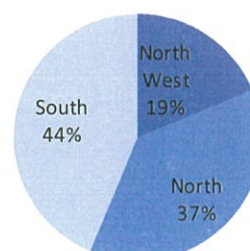
The Board determined that 10 matters required further investigation. These complaints were dealt with under S108, as the Board was satisfied that there was insufficient evidence to substantiate the complaint or the evidence appeared to indicate that the conduct complained about only amounted to minor misconduct that could adequately be dealt with by the Board.

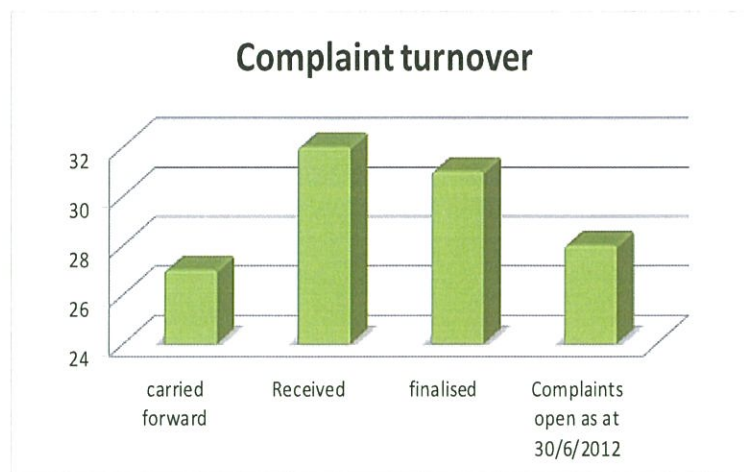
One complaint was withdrawn by the complainant and the Board was satisfied that it was not in the public interest to continue to investigate the complaint.

Action taken - Complaints carried forward

27 complaints were carried over from the previous reporting period. Only 7 of these matters have not yet been finalised.

Complaint by Region





Of the 20 complaints finalised, 3 matters were dismissed pursuant to Section 98 as the Board was satisfied that the complaint was vexatious, misconceived, frivolous or lacking in substance. 3 complaints were withdrawn. The Board determined that 14 matters required further investigation. 6 of these complaints were dealt with under S108, as the Board was satisfied that there was insufficient evidence to substantiate the complaint or the evidence appeared to indicate that the conduct complained about only amounted to minor misconduct that could adequately be dealt with by the Board. 4 matters were dealt with under S109 and the property agents were issued with a caution or reprimand, and 4 conduct complaints were referred to the Tribunal.

Discipline and Enforcement

During the year the Board formally reprimanded 3 real estate agents. Four real estate agents were cautioned on their conduct and were advised the Board would closely monitor the agency's performance. The Board also required undertakings from 3 real estate agents to refrain from any future breaches of the legislation. Assurances from 12 real estate agents were received that their agency practice had been amended to comply with relevant standards.

There were 4 appeals to the Tribunal from decisions of the Board and 1 appeal to the Magistrates Court from a Tribunal decision.

On one occasion the Board had cause to publish in the State's three regional newspapers notice of the suspension of a real estate agent. The Board considered the publication was necessary to give members of the public who might be affected notice of the fact that the individual was no longer entitled to carry out the functions of a real estate agent.

The Board received payments totaling \$8,800 awarded as fines and/or costs as a result of disciplinary action being taken by the Tribunal.

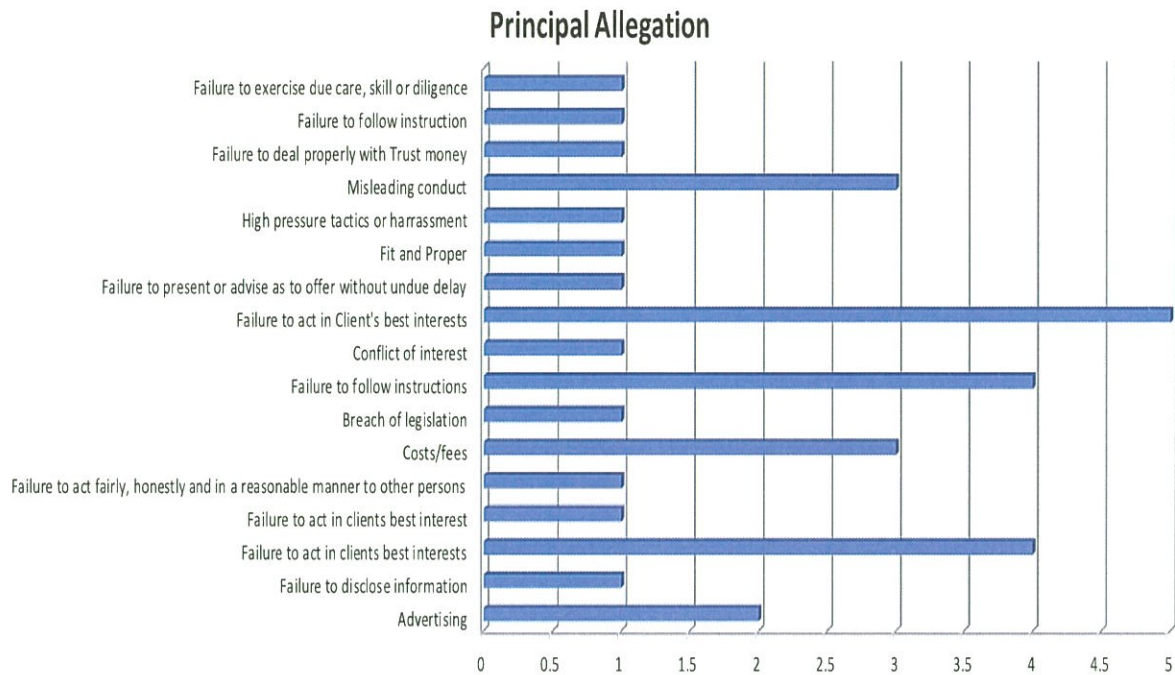
Property Agents Tribunal

The Tribunal's report is attached.

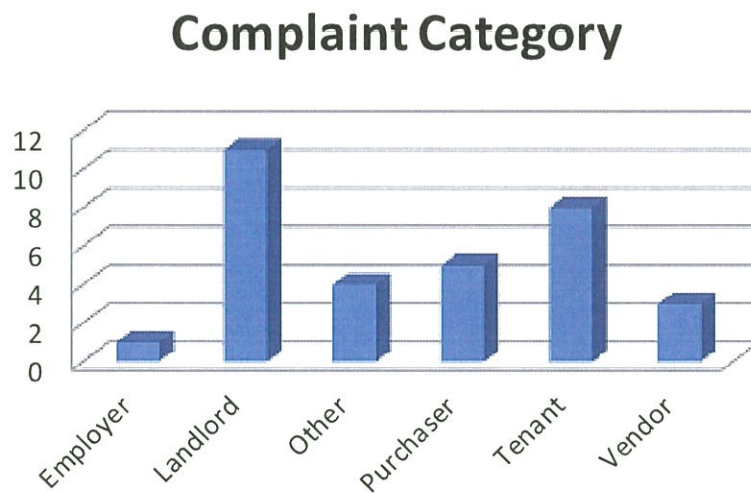
Complaint process

The Board is of the view that some amendment is required to the legislation to facilitate the complaint process. The Board has spent substantial time considering what amendments could be made to achieve this, and has made submissions to the Minister.

Many complaints were based on multiple allegations of wrong doing, but a summary of what the complaint related to is set out below.



The categories of complainant may broadly be stated as follows:-



TRUST ACCOUNTS

The Act and Regulations set out how property agents are to maintain their trust account records. The Board has maintained its policy of requiring full compliance with the trust account provisions.

Property agents are required to submit a trust account report to the Board, by 31 December and 30 June and by 30 September each year an audit report of the property agent's trust accounts. This audit is performed by an independent auditor.

Trust account reports

Approximately 308 trust account reports were received from the 152 property agents holding trust accounts in Tasmania in December and June 2011-2012.

Annual audit reports

254 annual audit reports were received and reviewed during 2010-11. Of the 254 annual Audit Reports twelve were qualified. Audit investigations were initiated and completed. This is two more than last year's 9 but still considerably less than the 18 in 2008-2009. All twelve real estate agents were given assistance to ensure compliance. The real estate agents were requested to provide copies of monthly reconciliation statements and accompanying supporting documents. Over a three month period each property agent was assisted to rectify any issues. This resulted in approximately 108 reconciliation reviews.

The Board has initiated further changes to the audit report and checklist for the next auditing period which is designed to increase awareness of areas of concern to be identified by the auditors. Direct advice has been given to major audit providers regarding the audit process as well as a review of the annual audit reporting requirements and background information to assist auditors with the conduct of audits.

Inspections

The Board has an ongoing Inspection program which includes the review of trust account reports, audit reports and a checklist to undertake investigations and inspections.

The inspections are conducted at different levels and are categorised as:

- **Full** - Comprehensive inspection review of compliance with relevant legislative requirements
- **Partial** - Inspection reviewing defined parameters
- **Review** - Property agents forward a defined scope of information to the Board for inspection
- **Courtesy** - Inspector contact

As well as qualified audit reports being received from auditors or from the inspection program, there are three other ways that non-compliance with the trust account provisions may come to the attention of the Board:

- during an investigation into a conduct complaint;
- through a complaint directly relating to an agent's operation of the trust account; and
- through Financial institutions notifying the Board when a trust account becomes overdrawn.

Reviews of trust accounts are shown in the table below:

Form 7 Review		The Board has provided assistance to over 50 property agents with regard to their statutory reporting requirements. The majority of the assistance has mainly involved newly qualified agents, or property agents who have changed accounting software packages or taken over the responsibility of trust account reconciliations, or the answering of queries with regard to legislative compliance.
Dec-11	309	
Jun-12	309	
Audit Review		A cyclical, risk-based annual inspection program continues to allow a higher number of property agents to be contacted by the Board for inspections or review.
2010-2011	254	
Qualified Audit investigation	12	
Full Inspection	2	Amendments to trust account regulations were proclaimed on 30 June 2011, the result of which will be minor administrative changes to property agent's processes. The apparent impact of these changes will be apparent in the 2012-2013 audit year.
Part Inspection	3	
Review	11	
Courtesy	50+	

Professional Indemnity Insurance

The Board continues to monitor professional indemnity insurance held by real estate agents, property managers and general auctioneers. Property Agents are required on application or renewal of registration to provide a copy of a Certificate of Currency for Professional Indemnity Insurance. The Board maintains a register of this information.

Right to Information Requests

Three applications under the Right to Information Act were received by the Board during the year. The applications were incomplete and were therefore rejected in accordance with the Act.

Legislative Amendments

The Board has recommended a number amendments to legislation.

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The Board brought to the Department's attention a number of issues including:</p> <ul style="list-style-type: none"> • the complaint process; • employment of Assistant Property Managers by Real Estate Agents • management of short term accommodation; • exemption requests; • limitation periods for actions being taken by the Board; • advertising and signage; | <ul style="list-style-type: none"> • Part 10 of the Act (vendor disclosure and cooling off periods); • agency termination (Section 18); • amendment to the Regulations with regard to trust account reporting; • licensing of Property Consultants and Assistant Property Managers; • trust account definitions; and • national licensing |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Education and Awareness

The Board provided:

- A counter information service to members of the public and industry;
- A telephone information service to members of the public and industry;
- Support and funding through the Property Agents Guarantee Fund for education programs for the professional development of property agents.
- Information by way of bulletins to the industry.

Education

The Board provides support for education and professional development. Funding from the Property Agents Guarantee Fund is provided to the Real Estate Scholarship Board Inc and Real Estate Institute of Tasmania for this purpose.

The **Real Estate Scholarship Board Inc** is an incorporated body which was established in 1989. It is a Group Training Organisation whose objective is to provide structured training for people who wish to embark on a career in the real estate industry.

Group training is an employment and training arrangement whereby the organisation employs trainees under a training contract and places them with host employers. The Real Estate Scholarship Board undertakes the employer responsibilities for the quality and continuity of the scholars' employment and training.

Scholars who complete their training are awarded a Diploma of Property (Real Estate) or Diploma of Property Services (Agency Management).

The **Real Estate Institute of Tasmania** (REIT) is a Registered Training Organisation (RTO) accredited to deliver and assess certain qualifications. The REIT provides entry level and continuing professional development training courses based on the National Training Package (CPP07 Property Services Training Package) and other accredited unit of study.

Continuing Education

The continuing education program has been designed to increase the knowledge, skills and professionalism of individual property agents. The continuing education program forms part of the regulatory framework. All individual real estate agents, property managers and general auctioneers who hold a registration are required to complete 8 hours of approved continuing education each registration year. Through the continuing education program, registered property agents are expected to undertake ongoing training and professional development related to their legislative obligations under the Act, Regulations and the Code of Conduct.

A dedicated section of the Board's website allows property agents to access up-to-date information about continuing education and courses available.

The continuing education program was developed with greater detail for seminars and approved training and training providers. The Board believes continuing education promotes professionalism and consumer confidence in the real estate industry. The Board expects that by raising participants' levels of understanding of their legislative obligations and accepted industry practice, continuing education will result in improved standards in the industry.

It remains the Board's view that amendment to the legislation to include continuing education for property consultants and assistant property managers would further raise the professionalism of the real estate industry.

Publications

To provide information to industry members and stakeholders, the Board produces a half yearly newsletter. The Information Bulletin includes information on industry practice issues, disciplinary and other proceedings and legislative amendments. It is mailed to all registered property agents and can also be downloaded from the Board's website. The Board also produces additional relevant material from time to time, which it forwards to all registered property agents and includes on the Board's website.

Website

The Board's website at www.propertyagentsboard.com.au is a significant resource and assists it to carry out its statutory functions in providing a range of information for the industry and educating the public. It provides downloadable copies of all the Board's publications, forms, and access to electronic copies of real estate legislation. The website is integral to the Board's commitment to conduct and promote education and provide advisory services for industry members, stakeholders and the public.

TRIBUNAL

Pursuant to the Property Agents and Land Transactions Act 2005

Royal Engineers Building
2 Davey Street
Hobart Tas 7000

5th July 2012

Phone: 03 6234 2700

Fax: 03 6234 2216

E-mail:

registrar@propertyagentstribunal.com.au

The Chairman
Property Agents Board
Royal Engineers Building
2 Davey Street
HOBART TAS 7000

Dear Mr Chairman

In accordance with S.117 of the Property Agents & Lands Transaction Act 2005 ("the Act") I am pleased to provide this report on the activities of the Tribunal for the period 1 July to 30 June 2012.

Yours faithfully



DAVID WALLACE
President

TRIBUNAL

Pursuant to the Property Agents and Land Transactions Act 2005

REPORT ON ACTIVITIES 2011-2012

1. References

The Tribunal has received four (4) references in respect of conduct complaints.

Three of those have been heard and determined during the reporting period and one has been part-heard and is pending legal submissions to be made to the Tribunal.

1.1 The first reference involved a breach of Regulation 8 of the *Property Agents and Land Transaction Regulations* being the neglect by the real estate agent of professional responsibilities to properly instruct and supervise an employee and to properly monitor the disbursement of trust money for their client. The breach related to the culpability of the two individual directors of the real estate agent. The culpability of one was found to be less than the other. The first real estate agent was ordered to pay a fine of \$1,000, the second was reprimanded. Both were ordered to pay costs of the Board.

1.2 The second and third references involved conduct of two different real estate agents who allegedly were involved in behavior that may have constituted unsatisfactory professional conduct. It related to the advertising for sale of a seller's property at a price far less than alleged was authorized. A second complaint concerned alleged representations by the agents concerning the costs to the seller of subdivision of a piece of land from the sellers property and to obtain a separate title which were grossly inadequate, but which the seller said was relied on when entering into a binding contract. The seller was bound to meet all costs of obtaining a separate title following subdivision, brokered by the agents.

The Property Agents Board referred the conduct complaint to the Tribunal for hearing.

The conduct complaint was dismissed by the Tribunal following the complainant's refusal to give evidence in the Tribunal.

An application by one of the agents, which was legally represented throughout the investigation and on the conduct complaint, was made that the Board pay its costs of and incidental to the reference following its dismissal. The Tribunal held in the circumstances and taking into account the Boards statutory function that it was not appropriate that the board pay the agents costs and dismissed the agents application.

2. Appeals

There have been four (4) appeals to the Tribunal from decisions of the "Board".

2.1 Three matters relate to appeals made by one complainant.

Each of these appeals were dismissed by consent and parties paid their own costs.

2.2 The Fourth matter was against the Boards decision that there was insufficient evidence to substantiate the complaints following its investigation. The Tribunal upheld the Boards decision that the evidence before the Board was insufficient to show the agent was guilty of unsatisfactory professional conduct when drafting a contract for sale which fell short of what the client vendor wished for.

3. Functions of the Tribunal

3.1 All but one hearing has been held in Southern Tasmania, the other was held in Launceston.

3.2 All references have involved legal argument and submissions as to the interpretation of and the application of "the Act" and the Regulations made pursuant to it.

3.3 The Tribunal adopted procedural directions hearings which are aimed at the more efficient conduct of hearings of the Tribunal. It is however the fact that unrepresented complainants have difficulty in either understanding what the Tribunal would like from them in complying with directions or tend to ignore them and provide repetitious material expanding on the initial material in their complaints.

3.4 It will be necessary for the Tribunal to further address this and make the requirements of the Tribunal directions clearer especially where complainants are unrepresented.

4. Member of Tribunal

On the 13th of March 2012 Robyn Margaret Yeoland was appointed to be a member of the panel of the Tribunal.

5. Decisions of the Tribunal

The Tribunal is to implement a process of aiming to have its decisions published at least within six weeks of the completion of a hearing. This will involve protocols being set by the President in consultation with the Registrar.



DAVID WALLACE
President

Property Agents Board

Financial Statements

For the Year Ended 30 June 2012

Property Agents Board

30 June 2012

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Property Agents Board

Board's Report

30 June 2012

Your Board Members submit the financial statements of the Board for the financial year ended 30 June 2012.

1. General information

Board Members

The names of Board Members throughout the year and at the date of these statements are:

John Upcher
John Soundy
Ian Wells
Belinda Webster
Kim Backhouse

Principal Activities

The principal activities of the Board during the financial year were to act in the public interest, to ensure acceptable standards of practice by auctioneers, real estate agents and property managers and people engaged by general auctioneers, real estate agents and property managers.

Significant Changes

No significant change in the nature of these activities occurred during the year.

2. Business review

Operating result

The surplus/(deficit) of the Board for the financial year amounted to \$ 5,946 (2011: \$ (4,606)).

3. Other items

Significant Changes in State of Affairs

No significant changes in the Board's state of affairs occurred during the financial year.

Signed in accordance with a resolution of the Members of the Board:

Chairman: VR Upcher

Executive Officer: [Signature]

Dated this 29th day of August 2012.

Property Agents Board

Statement by Members of the Board

The Board has determined that the organisation is not a reporting entity and that these special purpose financial statements should be prepared in accordance with the accounting policies outlined in Note 1 to the financial statements.

In the opinion of the Board the financial statements:

1. Presents a true and fair view of the financial position of Property Agents Board as at 30 June 2012 and its performance for the year ended on that date.
2. Complies with Australian Accounting Standards and Interpretations except for AASB 7 Financial Instruments: Disclosure, AASB 124 Related Parties, AASB 132 Financial Instruments: Presentation, AASB 139: Recognition and Measurement and AASB 108: Accounting Policies, Changes in Accounting Estimates and Errors.
3. At the date of this statement, there are reasonable grounds to believe that Property Agents Board will be able to pay its debts as and when they fall due.

This statement is made in accordance with a resolution of the Board and is signed for and on behalf of the Board by:

Chairman: 

Executive Officer: 

Dated this 29th day of August 2012.

Property Agents Board

Statement of Comprehensive Income

For the Year Ended 30 June 2012

	Note	2012 \$	2011 \$
Income			
Application fees		14,204	12,529
Examination fees		16,011	21,724
Fines		8,818	2,229
Interest income		20,254	27,819
Late fees collected		7,739	8,480
Miscellaneous income		161	10,152
Photocopying		-	1,069
Property Agents Trust - Research/NOLS/Education/Examination		83,600	57,622
Property Agents Trust - Distributions		592,471	1,000,087
Property Agents Trust - Reimbursements		-	1,364
Property Agents Trust - Secretarial Fees		15,000	9,000
Registration fees		183,033	186,724
Secretarial services - Real Estate Scholarship Board		1,000	800
Sundry income		25	92
Total income		942,316	1,339,691
Less: Expenses			
Accounting and audit fees		5,060	10,374
Bank charges		368	476
Depreciation		4,046	3,632
Entertainment		876	2,169
Examination expenses		8,955	7,739
Fines and penalties		350	476
Insurance		2,606	2,596
Inspections		14,827	13,041
Investigations		16,383	6,547
Legal expenses		21,908	34,383
Maintenance, equipment and software supplies		3,925	14,576
Meeting expenses - travel, accommodation		1,237	73
Meeting expenses - sitting fee		9,227	13,340
Provision - employee leave benefits		6,736	5,694
Occupancy costs		24,083	22,386
Postage		4,323	4,695
Printing and stationery		7,321	8,429
Reports and subscriptions		1,114	1,009
Salaries - Employees		157,190	132,401
Salaries - Board Chairman		15,999	14,667
Security costs		-	294
Superannuation contributions		17,442	15,361
Telephone and fax		8,037	9,070
Tribunal expenses		11,646	18,764

The accompanying notes form part of these financial statements.

Property Agents Board

Statement of Comprehensive Income

For the Year Ended 30 June 2012

		2012	2011
	Note	\$	\$
Travel		240	1,114
Water		-	904
Property Agents Trust Distributions to REIT - Training & Seminars	10	59,123	148,080
Property Agents Trust Distributions to REIT - Research and Training	10	295,587	290,467
Property Agents Trust Distributions to REIT - Training Material Rewrite	10	6,703	12,502
Property Agents Trust Distributions - RESB	10	231,058	549,038
Total Expenses		<u>936,370</u>	<u>1,344,297</u>
Surplus/(deficit) for the year		<u>5,946</u>	<u>(4,606)</u>
Other comprehensive income		<u>-</u>	<u>-</u>
Total comprehensive income		<u><u>5,946</u></u>	<u><u>(4,606)</u></u>

The accompanying notes form part of these financial statements.

Property Agents Board

Statement of Financial Position

As at 30 June 2012

	Note	2012 \$	2011 \$
ASSETS			
CURRENT ASSETS			
Cash and cash equivalents	2	105,839	71,822
Receivables	3	5,733	4,101
Other financial assets	4	450,000	450,000
Other assets	5	40,708	1,616
TOTAL CURRENT ASSETS		<u>602,280</u>	<u>527,539</u>
NON-CURRENT ASSETS			
Property, plant and equipment	6	19,742	17,249
TOTAL NON-CURRENT ASSETS		<u>19,742</u>	<u>17,249</u>
TOTAL ASSETS		<u>622,022</u>	<u>544,788</u>
LIABILITIES			
CURRENT LIABILITIES			
Payables	7	96,072	29,655
Short-term provisions	8	13,491	8,945
Other liabilities	9	-	1,864
TOTAL CURRENT LIABILITIES		<u>109,563</u>	<u>40,464</u>
Other long-term provisions	8	13,793	11,603
TOTAL NON-CURRENT LIABILITIES		<u>13,793</u>	<u>11,603</u>
TOTAL LIABILITIES		<u>123,356</u>	<u>52,067</u>
NET ASSETS		<u>498,666</u>	<u>492,721</u>
EQUITY			
Accumulated surpluses		498,666	492,721
TOTAL EQUITY		<u>498,666</u>	<u>492,721</u>

The accompanying notes form part of these financial statements.

Property Agents Board

Statement of Changes in Equity

For the Year Ended 30 June 2012

2012

	Accumulated surpluses	Total
	\$	\$
Balance at 1 July 2011	492,720	492,720
Total surplus/(deficit) for the year	5,946	5,946
Balance at 30 June 2012	498,666	498,666

2011

	Accumulated surpluses	Total
	\$	\$
Balance at 1 July 2011	497,327	497,327
Total surplus/(deficit) for the year	(4,607)	(4,607)
Balance at 30 June 2011	492,720	492,720

The accompanying notes form part of these financial statements.

Property Agents Board

Statement of Cash Flows

For the Year Ended 30 June 2012

	Note	2012 \$	2011 \$
CASH FLOWS FROM OPERATING ACTIVITIES:			
Reciepts from fees and registrations		228,173	219,537
Receipts from Property Agents Trust		648,499	1,111,572
Payments to suppliers and employees		(307,409)	(325,590)
Distribution of Property Agents Trust receipts		(551,763)	(1,047,848)
Interest received		21,870	26,260
Other receipts		1,186	24,187
Net cash provided by/(used in) operating activities		<u>40,556</u>	<u>8,118</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchase of property, plant and equipment		(6,539)	(15,995)
Transfer of investments (to)/from cash		-	(200,000)
Net cash provided by/(used in) investing activities		<u>(6,539)</u>	<u>(215,995)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:			
Cash and cash equivalents at beginning of year		<u>71,822</u>	<u>279,699</u>
Cash and cash equivalents at end of financial year	2	<u><u>105,839</u></u>	<u><u>71,822</u></u>

The accompanying notes form part of these financial statements.

Property Agents Board

Notes to the Financial Statements

For the Year Ended 30 June 2012

1 Summary of Significant Accounting Policies

(a) Basis of Preparation

These financial statements are special purpose financial statement prepared in order to satisfy the financial reporting requirements of the Property Agents & Land Transactions Act 2005. The Board has determined that the Board is not a reporting entity.

The financial statements have been prepared as a going concern on an accruals basis and are based on historical costs and do not take into account changing money values.

In addition to complying with the financial reporting requirements of the Property Agents & Land Transactions Act 2005, these special purpose financial statements comply with Australian Accounting Standards and Interpretations except for AASB 7 Financial Instruments: Disclosure, AASB 124 Related Parties, AASB 132 Financial Instruments: Presentation, AASB 139 Recognition and Measurement and AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors.

The following significant accounting policies, which are consistent with the previous period unless otherwise stated, have been adopted in the preparation of these financial statements:

(b) Comparative Figures

Where appropriate comparative figures have been adjusted to conform to changes in presentation for the current financial year.

(c) Cash and Cash Equivalents

Cash and cash equivalents include cash on hand, deposits held-at call with banks, other short-term highly liquid investment and bank overdrafts. Bank overdrafts are shown within short-term borrowings in current liabilities on the statement of financial position.

(d) Trade and Other Receivables

The Board considers accounts receivable to be fully collectible, accordingly no allowance for impairment is required.

(e) Property, Plant and Equipment

Property, plant and equipment are carried at cost. All assets are depreciated over their useful lives to the Board.

Depreciation Rates

The depreciation rates used for each class of depreciable assets are:

Class of Fixed Asset	
----------------------	--

Furniture, Fixtures and Fittings	12.5% - 25%
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Property Agents Board

Notes to the Financial Statements

For the Year Ended 30 June 2012

1 Summary of Significant Accounting Policies continued

(f) Critical Accounting Estimates and Judgments

The Board evaluate estimates and judgments incorporated into the financial report are based on historical knowledge and best available current information. Estimates assume a reasonable expectation of future events and based on current trends and economic data, obtained both externally and within the Board.

(g) Trade Payables

Trade and other payables are stated at cost, which approximates fair value due to the short term nature of these liabilities.

(h) Employee Benefits

Provision is made for the Board's liability for employee benefits arising from services rendered by employees to the end of the reporting period. Employee benefits that are expected to be settled within one year have been measured at the amounts expected to be paid when the liability is settled. Employee benefits payable later than one year have been measured at the estimated future cash outflows to be made for those benefits.

Contribution made by the Board to an employee superannuation fund are charged as expenditure when incurred.

(i) Provisions

Provisions are recognised when the Board has a legal or constructive obligation, as a result of past events, for which it is probable that an outflow of economic benefits will result and that outflow can be reliably measured.

(j) Unspent Property Agents Trust Distributions

It is the policy of the Board to treat Property Agents Trust distributions as unexpended funds liabilities in the statement of financial position where the Board is contractually obliged to provide services in a subsequent financial period to when the grant is received.

(k) Income Tax

No provision for income tax has been raised as the Board is exempt from income tax under Div 50 of the *Income Tax Assessment Act 1997*.

(l) Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of the amount of GST, except where the amount of GST incurred is not recoverable from the Tax Office. In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of an item of the expense. Receivables and payables in the statement of financial position are shown inclusive of GST.

Cash flows are presented in the statement of cash flows on a gross basis.

Property Agents Board

Notes to the Financial Statements

For the Year Ended 30 June 2012

1 Summary of Significant Accounting Policies continued

(m) Revenue and Other Income

Registration income is recognised over the period to which the registration relates.

Interest revenue is recognised over the period for which the funds are invested.

Revenue from the provision of services is recognised upon delivery of the service to the customers.

Property Agents Trust Distribution income is recognised when the services, which the Board is contractually obliged to provide, are delivered (refer Note 1(j)).

All revenue is stated net of the amount of goods and services tax (GST).

2 Cash and Cash Equivalents

	2012	2011
	\$	\$
Cash on hand	1,054	1,059
Cash at bank	104,785	70,763
	<u>105,839</u>	<u>71,822</u>

3 Trade and other receivables

	2012	2011
	\$	\$
CURRENT		
Trade and other receivables	5,733	4,101
	<u>5,733</u>	<u>4,101</u>

4 Other Financial Assets

	2012	2011
	\$	\$
CURRENT		
Long term bank deposits (maturity date greater than 3 months)	450,000	450,000
	<u>450,000</u>	<u>450,000</u>

5 Other Assets

	2012	2011
	\$	\$
CURRENT		
Accrued Income - Property Agents Trust Distributions	40,708	-
Accrued Income - Other	-	1,616
	<u>40,708</u>	<u>1,616</u>

Property Agents Board

Notes to the Financial Statements

For the Year Ended 30 June 2012

6 Property, Plant and Equipment

	2012	2011
	\$	\$
PLANT AND EQUIPMENT		
Furniture, fixture and fittings		
At cost	29,303	22,763
Accumulated depreciation	(9,561)	(5,514)
Total property, plant and equipment	<u>19,742</u>	<u>17,249</u>

(a) Movements in Carrying Amounts

Movement in the carrying amounts for each class of property, plant and equipment between the beginning and the end of the current financial year:

	2012	2011
	\$	\$
Balance at the beginning of year	17,249	4,886
Additions	6,539	15,995
Depreciation expense	(4,046)	(3,632)
Balance at end of year	<u>19,742</u>	<u>17,249</u>

7 Payables

	2012	2011
	\$	\$
CURRENT		
PAYG withholding	9,067	8,593
Trade payables	50,127	5,620
Accrued expenses	40,264	14,834
GST payable/(receivable)	(3,386)	608
	<u>96,072</u>	<u>29,655</u>

Property Agents Board

Notes to the Financial Statements

For the Year Ended 30 June 2012

8 Provisions

	2012	2011
	\$	\$
CURRENT		
Provision for annual leave	13,491	8,945
	<u>13,491</u>	<u>8,945</u>
	2012	2011
	\$	\$
NON-CURRENT		
Provision for long service leave	13,793	11,603
	<u>13,793</u>	<u>11,603</u>

9 Other liabilities

	2012	2011
	\$	\$
Unexpended Property Agents Trust Distributions		
Opening balance	1,864	-
Property Agents Trust Distributions received	592,471	1,001,951
Property Agents Trust Distributions redistributed	(594,335)	(1,000,087)
Closing Balance	<u>-</u>	<u>1,864</u>

10 Related Party Transactions

Transactions between related parties are on normal commercial terms and conditions no more favourable than those available to other parties unless otherwise stated.

Transaction with related parties:

(a) Provides services to related parties

The Board provides secretarial services to the Property Agents Trust and the Real Estate Scholarship Board. The fees received from each are separately disclosed on the face of the Statement of Comprehensive Income.

(b) Distributions made to related parties

The Board manages the distribution of Property Agents Trust funds to the Real Estate Scholarship Board and the Real Estate Institute of Tasmania for the provision of education and training as approved by the Minister and Board each financial year. Distributions are based on actual claims received as evidence of services provided.

Property Agents Board

Notes to the Financial Statements

For the Year Ended 30 June 2012

11 Cash Flow Information

Reconciliation of result for the year to cashflows from operating activities

Reconciliation of net income to net cash provided by operating activities:

	2012	2011
	\$	\$
Net surplus/(deficit) for the year	5,946	(4,606)
Cash flows excluded from surplus attributable to operating activities		
Non-cash flows in surplus:		
- depreciation	4,046	3,632
Changes in assets and liabilities, net of the effects of purchase and disposal of subsidiaries:		
- (increase)/decrease in trade and other receivables	(1,632)	(1,440)
- (increase)/decrease in other assets	(39,092)	41,440
- increase/(decrease) in trade and accruals	66,416	(38,465)
- increase/(decrease) in other liabilities	(1,864)	1,864
- increase/(decrease) in provisions	6,736	5,693
Cashflow from operations	<u>40,556</u>	<u>8,118</u>

12 Contingent Liabilities and Contingent Assets

There are no contingent liabilities or contingent assets at reporting date to be disclosed.

13 Capital and Leasing Commitments

(a) Operating lease commitments

Non-cancellable operating leases contracted for but not capitalised in the financial statements

	2012	2011
	\$	\$
Payable - minimum lease payments:		
- no later than 1 year	-	2,280
	<u>-</u>	<u>2,280</u>

The operating leases commitment in 2011 was for a photocopier.

There are no capital commitments as at reporting date to be disclosed.

14 Events After Balance Date

There are no events after balance date affecting these financial statements to be disclosed.

Property Agents Board

Notes to the Financial Statements

For the Year Ended 30 June 2012

15 Organisation Details

The registered office of the Board is:
Property Agents Board
2 Davey Street
HOBART TAS 7000

Independent Auditor's Report

To Members of the Parliament of Tasmania

Property Agents Board

Financial Report for the Year Ended 30 June 2012

I have audited the accompanying special purpose financial report of the Property Agents Board (Board), which comprises the statement of financial position as at 30 June 2012 and the statements of comprehensive income, changes in equity and cash flows for the year ended on that date, a summary of significant accounting policies, other explanatory notes and the Members' statement.

Opinion

In my opinion the Board's financial report presents fairly, in all material respects, its financial position for the year ended 30 June 2012 and its financial performance, cash flows and changes in equity for the year then ended.

Basis of Accounting and Restriction on Distribution

Without modifying my opinion, I draw attention to Note 1(a) to the financial report, which describes the basis of accounting. The financial report has been prepared to assist the Board to meet the requirements of the *Property Agents and Land Transactions Act 2005*. As a result, the financial report may not be suitable for another purpose.

The Responsibility of the Members for the Financial Report

The Members are responsible for the preparation and fair presentation of the financial report and have determined that the accounting policies described in Note 1(a), are appropriate to meet the financial reporting requirements of the *Property Agents and Land Transactions Act 2005*. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial report based upon my audit. My audit was conducted in accordance with Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance as to whether the financial report is free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Members' preparation and fair presentation of the financial report in order to design audit procedures that are appropriate to the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Board's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Members, as well as evaluating the overall presentation of the financial report. No opinion is expressed as to whether the accounting policies used are appropriate to the needs of the Board.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Independence

In conducting this audit, I have complied with the independence requirements of Australian Auditing Standards and other relevant ethical requirements. The *Audit Act 2008* further promotes independence by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General, and
- mandating the Auditor-General as auditor of State Entities but precluding the provision of non-audit services, thus ensuring the Auditor-General and the Tasmanian Audit Office are not compromised in their role by the possibility of losing clients or income.

Tasmanian Audit Office



J J Tongs

Director Technical and Quality
Delegate of the Auditor-General

HOBART

7 September 2012

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