



Property Agents Board
**Information
 Bulletin**
 December 2020

Information published by the Property Agents Board is considered to be true and correct at the time of publication, however, changes in circumstances after the time of publication may impact on the accuracy of this information. This Information Bulletin is provided for general information purposes only and while reasonable care is taken in its preparation the Property Agents Board does not guarantee or warrant the completeness.

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CURRENT LEGISLATION

- PROPERTY AGENTS AND LAND TRANSACTIONS ACT 2016*
- PROPERTY AGENTS AND LAND TRANSACTIONS REGULATIONS 2017*
- CODE OF CONDUCT - VERSION 3*

Fee units are automatically indexed every financial year and are \$1.62 for the 2020-2021 financial year.
 One Penalty unit is \$172.00 for the 2020-2021 financial year.

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*This overview provides a snapshot of the Property Agents Board's activities
2019-2020*

Licences

<i>Real Estate Agent carrying on business</i>	223
<i>Real Estate Agent individual</i>	435
<i>Property Manager carrying on business</i>	8
<i>Property Manager individual</i>	5
<i>General Auctioneer carrying on business</i>	15
<i>General Auctioneer individual</i>	17
<i>Property Representatives</i>	1215

1918

CPD

699

Continuing Professional
Development
activities approved

Complaints

55

16 complaints were carried forward;
55 new conduct complaints received;
52 complaints were concluded;
19 complaints remained outstanding as at 30 June.

14 investigations were undertaken -

- 8 were dismissed with insufficient evidence;
- 4 were minor misconduct;
- 2 were referred to the Tribunal;

32 matters were dismissed -

- 3 were considered misconceived;
- 29 were considered lacking in substance;

6 matters were withdrawn

255 Examinations

252 property representative exams
3 enabling examinations
76% were successful on first attempt
21% required a second attempt
3% required a third attempt

Hobart 131
Launceston 82
Ulverstone 39

44 Inspections

The Board's Inspector
inspected Trust Accounts
and Statutory Records of
44 Property Agents

271 Trust Account Audits

271 audit reports and
checklists were reviewed

77 audits were qualified

Claims

7

6 claims were made against the
Property Agents Guarantee Fund
totalling \$4,520.

1 claim of \$16,539 was refused

8 Infringements

8 Infringements were issued
from
32 Show Cause letters

Contacts

4,066 phone calls
13,213 website visits
97 website enquiries
334 exam bookings

Right now and coming up....

Fees and Charges from 1 July 2020

EXAMINATION FEE	\$147.40
APPLICATION ASSESSMENT FEE	\$147.40
LICENCE FEES	
Real Estate Agent carrying on business (P1D1)	\$442.20
Real Estate Agent individual (P1D2)	\$147.40
Property Manager carrying on business (P2D1)	\$369.30
Property Manager individual (P2D2)	\$147.40
General Auctioneer carrying on business (P3D1)	\$442.20
General Auctioneer individual (P3D2)	\$147.40
Property Representative (P4)	\$74.50
LATE PROVISION OF REPORTS PROVIDED TO THE BOARD	\$74.50

The amount of fees and charges have not changed since last year.

The Board has however determined to rescind its policy decision to allow for reduced licence fees during the licence renewal period. This means that an application for licence received between April and June will have the full licence fee (for the licence being applied for) as well as the application assessment fee of \$147.40.

Licence Renewal 2021-2022

The licence renewal period for the 2020-2021 will revert back to being in April 2021. It is expected that renewal documents will be forwarded to property agents in March/April 2021.

The Board will forward the necessary paperwork via email to licensed property agents to apply to renew their licence.

The Application for Licence (Renewal) form for a company will be forwarded via email to the property agent nominated to manage the authorised place of business.

Property Agents are required to lodge the Application for Licence (Renewal) form, prescribed fees and any documents or information that the Board requires by **30 April 2021**.

Continuing Professional Development (CPD)

The Board temporarily modified its CPD policy in response to the COVID-19 pandemic and the impact on the property industry. It allowed an extension of time for property agents to complete their CPD requirements for the 2019-2020 licence year. This should now have been completed.

For those licence holders who have not completed their 2019-2020 CPD requirements the Board has allowed one final extension until 31 January 2021. However, if CPD is not completed with a declaration provided to the Board prior to 31 January 2021, then the licence holder **will not** be invited to renew their licence for 2021-2022. Those licence holders will be contacted directly.

The CPD requirements for 2020-2021 licence have returned to being 8 points of CPD with a minimum of 6 points industry specific and 2 points provided by an external training provider. However, if there is a specific CPD condition on the licence different requirements may apply.

Just a tip, don't leave it to the last minute. For full details of the Board's CPD policy click [here](#).

Last call - licence applications prior to Christmas

A complete licence application* that is received prior to 14 December 2020 will be assessed on or before 24 December 2020.

Incomplete licence applications or those received after 14 December 2020 will not be assessed until after 4 January 2021.

*Complete licence application means all documentation and fees have been received.

Processing....Processing....Processing....Proc

New Application for licence

There are new application forms available on the Board's website.

The new application forms start with application notes which are designed to assist in the application process. It might seem like a lot of information, but we are trying to answer questions that we have received in the past.

There are two forms – one for those property agents who are going to be conducting business and another for individuals who will not be conducting their own business.

An applicant that is a company has to provide different information from an individual conducting business.

An applicant who is a natural person must provide:

National Police Record Check issued no more than 3 months before the date the application is lodged with the Board.

Insolvency Check issued no more than 7 days before the date the application is lodged with the Board.

Proof of identification

Educational qualification and/or experience

The application notes provide all the details of how to complete the form and what you need to provide.

It is important to consider that the Board received 298 new applications for licence last financial year. That is more than one per working day (252 working days).

An applicant should allow 15 business days, if all the information has been provided. Obviously, if all the information hasn't been provided then it will take longer.

You will receive an acknowledgement email when your application is received. You will then receive a letter (sent via email) advising when the licence will be processed (if everything has been submitted) or alternatively advising what information is missing.

Change of Details - existing licence

There are changing detail forms available on the Board's website. Before a change can be made to the Board's Register there needs to be written instructions, because the Register is a statutory record and there must be evidence to make the change.

Property agents should allow 3 business days for processing. There will be a reply email confirming the Board's Register has been amended.

The form allows for "as soon as possible" or at a future date. If you know there are going to be some changes in the future, you can submit the form earlier.

There is no cost to make a change to the Register, just fill out the relevant form. The link is [here](#)

Licence Change Forms

To change details or employment use the Licence details change form.

LICENCE DETAILS CHANGE FORM - BUSINESS

LICENCE DETAILS CHANGE FORM PROPERTY AGENT TO MANAGE AUTHORISED PLAC

LICENCE DETAILS CHANGE FORM - INDIVIDUAL

Forms that require Board approval

There are some licensing matters that require Board approval. These include a property representative to manage an authorised place of business, and application to manage more than one authorised place of business. Enough time should be allowed for the application to be considered at a meeting of the Board, which are held monthly.

Trust Accounting

Trust Account Report

If a property agent who conducts business holds money in trust the property agent is required to lodge with the Board by 31 January 2021 a Trust Account Report for the six months ended 31 December 2020.

A separate Report must be completed for each trust account held.

The Trust Account Report must be completed by the managing property agent named on the Board's Register. Copies are available on the Board's website [here](#)

Warning – A fee of \$74.50 applies for late lodgement of each Trust Account Report.

Annual Audit Report and Checklist for the year ended 30 June 2020 - Result

386 audit reports or exemptions were required for the 2019-2020 financial year.

As at 30 June 2020 there were 246 property agents licensed to conduct business in Tasmania.

A total of 296 trust accounts were active during the financial year 1 July 2019 to 30 June 2020.

46 trust accounts were opened during the reporting period and 19 trust accounts were closed with the final audit report and checklist submitted.

90 property agents were exempt from providing a trust account audit as the property agent declared that the business did not receive or hold trust money within the meaning of the *Property Agents and Land Transactions Act 2016* (the Act) during the reporting period.

279 audit reports and audit exemptions were received by the statutory deadline of 30 September 2020.

A further 14 trust account audits were received after the 30 September 2020 deadline and 17 trust account audits remain outstanding as at 31 October 2020.

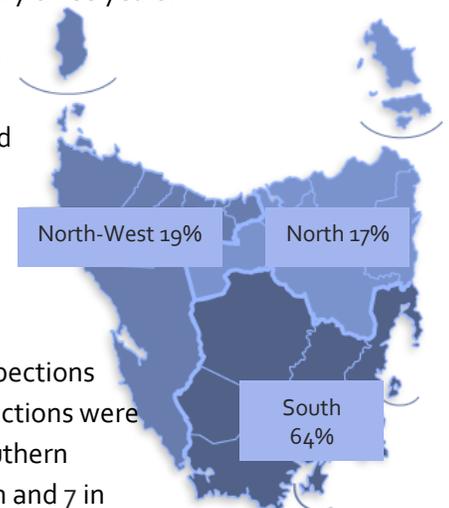
A total of 85 audits reports were qualified which were held by 52 different property agency businesses.

The approximate number of rental properties of all kinds, which includes some car parks and holiday rentals, managed by all property agents throughout the State totalled 33,285 for the 2019-2020 financial year.

Inspections

The inspection program is a cycle-based program with an inspection of each property agent's trust account and statutory records every three years.

41 onsite inspections were undertaken during 2019-2020 and four property agents had trust account reconciliation reviews.



Of the total of 41 inspections undertaken, 26 inspections were conducted in the Southern region, 8 in the North and 7 in the North-West.

Approved financial Institutions

The following are the approved financial institutions as at 30 June 2020:

- Australia and New Zealand Banking Corporation
- Bendigo Bank
- Commonwealth Bank of Australia
- Heritage Isle Credit Union
- Macquarie Bank Limited
- National Australia Bank
- Westpac Banking Corporation

Case Study - Listing Agent purchased property marketed to sell

Background

This matter was referred by the Property Agents Board (the Board) to the Property Agents Tribunal (the Tribunal) as it was considered that the conduct amounted to more than minor misconduct.

As this matter occurred before 1 April 2017, the relevant legislation in relation to the conduct is the *Property Agents and Land Transactions Act 2005* (the former Act) and the Code of Conduct (the former Code) appearing in schedule 2 of that Act. However, the orders and actions taken were imposed under Section 110 of the *Property Agents and Land Transactions Act 2016* (the Act).

Relevant Facts

In early February the Complainant contacted the Property Agent to discuss the potential sale of his property (the Property). At all material times the Property Agent was an employee of a Real Estate Agency.

The Property Agent attended the Property in the presence of the Complainant's partner and conducted a walk-through, carried out an appraisal of the Property and discussed the timing of marketing the Property, a suitable price range and what chattels were to be included in the sale. The Property Agent suggested to the Complainant's partner that the Complainant contact the Property Agent when he was ready to go to market with the Property, which was expected to be at the end of the year. The Property Agent advised that an achievable sale price for the Property was mid to high \$300,000's.

On 3 September the Property Agent met with the Complainant and his partner to discuss when to place the Property on the market; marketing options including recommendations for a \$4,000 advertising package; a range of possible sale prices for the Property; and the chattels that were going to be included in the sale.

During this meeting the Property Agent stated that his commission on a sale of \$375,000 would be \$11,000 and that he planned to begin to market the Property the following week and would organise a promotional video. The Complainant with his partner orally agreed to the marketing proposal and told the Property Agent to go to market the following week.

During this meeting the Complainant and/or his partner had disclosed to the Property Agent that they were selling because they intended to construct a house on another block which they had already purchased.

Between 3 and 6 September, the Complainant and his partner revealed the lowest price that would 'not disappoint' them would be \$375,000 (the minimum acceptable price) as well as their 'absolute goal price' and confirmed that they would want to be on the market in the coming weeks.

Between 6 September and 9 September, the Property Agent contacted the Complainant and made an offer to purchase the Property himself for \$375,000 less \$11,000 for the potential commission and less \$4,000 for marketing (the offer price). The offer price was accepted by the Complainant and no deposit was made by the Property Agent upon signing the contract.

At the time the Property Agent made the offer to purchase the Property, the Complainant had not signed a written appointment authorising the Property Agent to act. The Complainant had not paid the Real Estate Agency for any marketing and there was no marketing of the Property undertaken by the Property Agent or Real Estate Agency.

Grounds of referral

The Board in the referral to the Tribunal alleged that:

1. The Property Agent had been instructed by the owner to sell the Property.
2. The Property Agent acquired an interest in a property that he had been instructed to sell, contrary to Section 22 of the former Act.
3. The Property Agent's conduct fell 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, and the Property Agent was therefore guilty of unsatisfactory professional conduct.
4. By undertaking the conduct described the Property Agent had:

- (a) failed to act in the best interests of the client, the owner, contrary to clause 16(b) of the Code; and
- (b) grossly contravened his fiduciary obligations to the owner contrary to clause 17(d) of the former Code; and
- (c) failed to act honestly contrary to clause 17(e) of the former Code.

Discussion and findings of the Tribunal

The Tribunal found upon the evidence that as at 3 September or at latest 6 September, all the matters necessary to constitute an instruction to sell had occurred, with the sole exception of a formal written instruction.

The Tribunal also found that the evidence established that in all dealings with the Complainant and the Complainant's partner and all actions up until the time of his decision to inspect the Property with a view to making an offer to purchase the Property, the Property Agent was acting in his capacity as a property agent employed by the Real Estate Agency. Further, all the information obtained by the Property Agent at the appraisal in the February was obtained in his capacity as an employee of the Real Estate Agency.

In those circumstances, the Tribunal was satisfied that in all respects but the written engagement document, the Property Agent had been engaged and instructed to sell the Property. The written engagement was simply a formality, albeit one without which the Property Agent would not have been entitled to receive payment for his services. However, there were defences available under Section 22(5) 22(7) or 22(8) of the former Act that the Property Agent could rely on as discussed in headings below.

Written approval before entering into negotiations and after full disclosure of all relevant facts by the Property Agent

The Tribunal determined that there was no written disclosure to the Complainant of a material and significant aspect, which was that the Property Agent saved \$15,000 through the direct purchase compared to if he purchased it through the Real Estate Agency or otherwise on the open market.

Further there was no written disclosure to the Complainant or the Complainant's partner of the facts which might be thought to be most relevant to whether to

accept the offer or not or the way in which the offer was reached by deduction of the commission and marketing fees from the Complainant's minimum acceptable price, or comparable property prices in the area.

Acting honestly and reasonably

The Tribunal found that evidence showed that the Property Agent requested the Complainant and the Complainant's partner not to talk to anyone about the offer and that the Property Agent advised that his offer would save time and effort having open homes and avoid the uncertainty surrounding going to market. The Tribunal considered that the probable motive of the Property Agent in making these statements, was to conceal his actions from his employer, the Real Estate Agency business.

The evidence also indicated that the Property Agent failed to disclose to his employer, the Real Estate Agency he was acting consistently in all respects with the role of a property agent which then changed from that role to that of purchaser, when he indicated he was considering making an offer, and then made the offer.

This arrangement, including the failure to disclose it, had the effect of depriving the Property Agent's employer of a commission to which they would have been entitled, had the Property Agent continued to act in the role of a property agent and a sale eventuated.

The only beneficiary of this arrangement was to the Property Agent who made savings which were not shared in any way with the Complainant. The overriding view of the Tribunal was it was not satisfied that in all respects during the transaction that the Property Agent was acting honestly and reasonably.

Were the owners substantially in as good a position as if the Agent did not buy the Property?

The Tribunal noted that the Property was not exposed to what was an increasingly buoyant market at the time, so there was a possibility of loss of a better price and net return to the Complainant. However, whether a different outcome may have prevailed cannot be measured and therefore the Tribunal was not satisfied that the Complainant was in substantially as good a position.

Unsatisfactory professional conduct generally and the Code - clause 16(b) – acting in the client’s best interests.

The Tribunal observed the relationship between the Complainant and the Property Agent is a fiduciary one and failing to act in the best interests of a client is a breach of that fiduciary relationship.

The key issue for the Tribunal was whether the Property Agent by deducting the commission and marketing amounts from his Contract offer was a gross breach of fiduciary duty and dishonest as there had been no work carried out to justify any commission, and there had been no work carried out or money spent on marketing and acting in the interests of the Complainant would have required the Property Agent to consider providing to the Complainant some of the benefit of that deduction, by increasing the purchase price.

However, the Tribunal having regard to the Property Agent’s oral disclosure to the owner of the way in which the offer price was reached, did not find that the deduction of those items was dishonest or a gross breach of fiduciary duty towards the Complainant.

Professional misconduct, and clauses 17(d) and 17(e) of the Code - gross contraventions of fiduciary obligations and failing to act honestly or fraudulently.

The Tribunal had to consider whether the Property Agent in deducting the "commission" and the "marketing" amount from the sum of the minimum acceptable price, the Property Agent had grossly breached his fiduciary duty and had failed to act honestly and that this conduct fell 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.

The Tribunal was not satisfied that the Property Agent behaved dishonestly towards the Complainant in using the information obtained whilst acting as the Complainant’s property agent.

However, the Tribunal was satisfied that the Property Agent’s actions in bypassing his employer, the Real Estate Agency were deliberate and that failure to advise his employer of his actions as an employee setting up the marketing of the Property, followed by the change of stance to acting solely on his own behalf, was dishonest. The Property Agent obtained knowledge of the Property solely through his employment and whilst acting as a representative of his employer.

However, in determining what action should be taken, the Tribunal considered the purpose of the former Act, which was essentially the protection of the public, rather than employers. The dishonest conduct towards a member of the public would probably have been professional misconduct, however in the circumstances the Tribunal did not consider this aspect constituted professional misconduct but was satisfied that it constituted unsatisfactory professional conduct.

Overall Findings of the Tribunal

In summary, the Tribunal found the Property Agent’s conduct constituted unsatisfactory professional conduct in the following respects:

- i. In acquiring an interest in the Property which he had been instructed to sell, the Property Agent contravened Section 22(1) of the former Act. He had not established any of the defences provided under that Section.
- ii. Failing to act in the best interests of his client contrary to clause 16(b) of the former Code: the Property Agent did not act in the best interests of his client, in depriving the owner of the opportunity to have the price for the Property tested on the market. Whether this led to any monetary loss by the owner cannot be established, but the opportunity was lost.
- iii. Failing to act honestly, an example of professional misconduct given by clause 17(e) of the Code: The Tribunal finds that in the overall transaction, which included acting dishonestly towards his employer, the Property Agent was guilty of unsatisfactory professional conduct.

Orders and actions taken by the Tribunal

1. The Property Agent was ordered to undertake an ethics course identified by the Board that being “CPPREP5003 Manage ethical practice in the property industry”. This training must be undertaken within one year of the date of this decision and is to be paid by the Property Agent.
2. The Property Agent was fined the sum of \$15,000.00 to be paid within 6 months of the date of the decision.
3. The Tribunal ordered pursuant to Section 111 of the Act that the Property Agent pay costs in the sum of \$23,842.61 to the Property Agents Board.

Board's Register

Each licence is entered into one of the four different parts of the Board's Register. Real Estate Agents are named in Part 1, Property Managers are named in Part 2, General Auctioneers are named in Part 3 and Property Representatives are named in Part 4.

If the property agent is conducting business, it is named in Division 1 of the relevant Part. As well as the name of the licence holder further information is required to be held in the Board's Register, such as the address(es) where the business is being carried on, the business name and, if it is a company, the name of each of the company directors.

If the property agent is not conducting business, then the name and address of the person, and any other information that the Board determines, is included in the Board's Register in Division 2 of the relevant Part.

The Board is required to publish the Register on its website. For ease of reference the published Register is divided into those property agents conducting business and those property agents who do not conduct business.

The Register of Property Agents conducting business provides details of the licensed name, the name under which the business carries on business, the business' authorised place of business, the type of licence, when the licence expires and whether the licence is currently valid or not. A licence is marked as not valid if the licence has been surrendered during the licence year. (A licence is most commonly surrendered because the business no longer operates or due to a change in the structure of the business).

The Register of Individual Property Agents is a register of those people who are licensed as property agents but are not licensed to conduct business. The Board's Register provides the licence holder's name, and if the person is employed by a property agent conducting business it will provide that business name and its authorised place of business.

If the person is not currently employed these details will be blank. The Board's Register also indicates the licence type, when the licence expires and whether the licence is valid or not.

For individuals, a licence could be shown as not currently valid because the property agent has held one type of licence during the licence year and then been granted a different licence, such as when a property representative applies for a licence as a real estate agent.

In these circumstances the Board's Register will indicate that the individual was licensed as a property representative, which is marked as invalid, but will show that the person now holds a real estate agent licence.

Name	Business Name	Place of Business	Lic. Type	Lic. Until	Valid
© Home Property Management Pty Ltd	© Home Property Management	1/116 St John Street, Launceston, Tasmania 7250	P101	30 Jun 2021	Yes
© Realty Pty Ltd	Realty	Level 11, 90 Collie Avenue, Surfers Paradise, Queensland 4217	P101	30 Jun 2021	Yes
4 One 4 Real Estate Pty Ltd	4 One 4 Real Estate	414 Main Road, Glenorchy, Brighton, Victoria 3186	P101	30 Jun 2021	Yes
Advantage Pty Ltd	Advantage Pty Ltd	Shop 3, 157 Huxley Street, Brighton, Victoria 3186	P101	30 Jun 2021	Yes
Agency 36	Agency 36	9/15 Lee Street, Trentham, Tasmania 7250	P101	30 Jun 2021	Yes
Agency 36	Agency 36	35 Heales Road, Trentham, Tasmania 7250	P101	30 Jun 2021	Yes
Agency 36	Agency 36	7 Burnett Crescent, West Liverstone, Tasmania 7115	P101	30 Jun 2021	Yes
Agency 36	Agency 36	201 Newick Drive, Lifford, Tasmania 7301	P101	30 Jun 2021	Yes
Agency 36	Agency 36	25 Invermay Road, Launceston, Tasmania 7250	P101	30 Jun 2021	Yes
Agency 36	Agency 36	15/12 McKenna Street, Invermay, Tasmania 7210	P101	30 Jun 2021	Yes
Agency 36	Agency 36	5 Sutton Street, Glenorchy, Tasmania 7210	P101	30 Jun 2021	Yes
Agency 36	Agency 36	Unit 11, 111 Bagg Road, Subiaco, Western Australia 6008	P101	30 Jun 2021	Yes
Agency 36	Agency 36	201 Newick Drive, Lifford, Tasmania 7301	P101	30 Jun 2021	Yes
Agency 36	Agency 36	25 Invermay Road, Launceston, Tasmania 7250	P101	30 Jun 2021	Yes
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Agency 36	Agency 36	5 Sutton Street, Glenorchy, Tasmania 7210	P101	30 Jun 2021	Yes
Agency 36	Agency 36	Unit 11, 111 Bagg Road, Subiaco, Western Australia 6008	P101	30 Jun 2021	Yes
Agency 36	Agency 36	201 Newick Drive, Lifford, Tasmania 7301	P101	30 Jun 2021	Yes
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Agency					

Licence Numbers

There are 4 types of property agent licences available in Tasmania:

- a real estate agent licence;
- a property manager licence;
- a general auctioneer licence; and
- a property representative licence.



New licences granted during 2019-2020 licence year compared with the previous year are shown in table below:

Licence type	Licence year 2018-2019	Licence year 2019-2020
Real Estate Agent carrying on business (P1D1)	29	32
Real Estate Agent individual (P1D2)	71	64
Property Manager carrying on business (P2D1)	0	1
Property Manager individual (P2D2)	0	1
General Auctioneer carrying on business (P3D1)	2	2
General Auctioneer individual (P3D2)	2	1
Property Representative (P4)	197	197
Total	302	298

A total of 298 new licences were granted during 2019-2020 compared with 302 for the prior year.

The Board can grant a licence subject to a condition which may restrict activities under the licence or require the licence holder to perform an activity, for example Continuing Professional Development.

At renewal time each year there are a number of licence holders who choose not to renew their licence. This is usually because the licence holder has left the industry during the year but has kept the licence valid until its expiry.

This is evident in the table below as the number of

property representatives who held a licence as at 30 June 2020 was 1215 but the number of property representatives who made application to renew totalled was 1072.

This means that 143 property representatives either did not elect to renew their licence, or it was determined that these applicants were not eligible to make an application to renew.

The table below indicates licence numbers at the end of the licence year compared to the number of licences renewed. It does not appear that COVID-19 has impacted licence numbers as yet as the number of renewals is similar to those renewed last year before COVID-19.

Licences	As at 30 June 2019	Renewed 2019-2020	As at 30 June 2020	Renewed 2020-2021
Real Estate Agent carrying on business (P1D1)	227	207	223	208
Real Estate Agent individual (P1D2)	423	397	435	412
Property Manager carrying on business (P2D1)	9	7	8	8
Property Manager individual (P2D2)	14	4	5	5
General Auctioneer carrying on business (P3D1)	17	17	15	15
General Auctioneer individual (P3D2)	18	17	17	14
Property Representative (P4)	1277	1065	1215	1072
Total Licences	1985	1714	1918	1734

Examinations

Examinations numbers 2019-2020

The Property Agents Board conducts examinations for the qualification of property representatives.

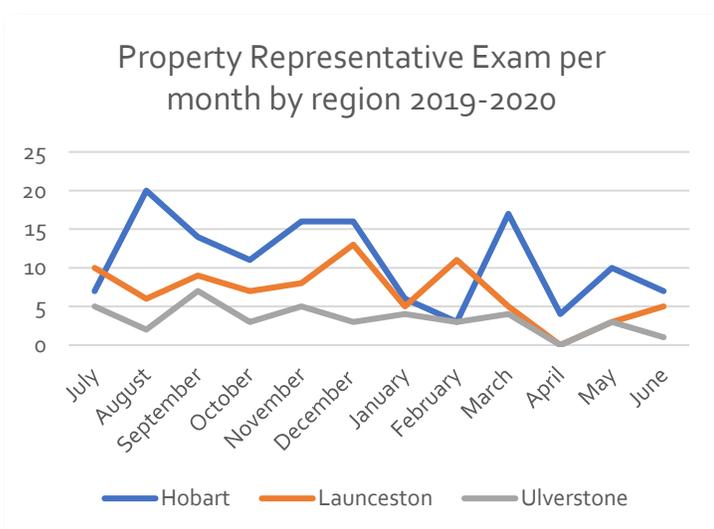
The property representative examination is an entry level examination which is designed to touch on a wide range of information.

The examination is designed for the candidate to demonstrate a basic level of knowledge and understanding of the property industry, as the expectation is that the person will build on this knowledge once working in the industry.

As the Act does not divide sales and property management functions the examination covers both areas.

252 property representative examinations were attempted in the reporting period. 131 in Hobart, 82 in Launceston and 39 in Ulverstone.

Overall, 76% of candidates were successful on their first attempt, 21% of candidates required a second attempt and 3% of candidates required a third examination attempt.



Virtual Examinations

Due to COVID-19 and social distancing requirements examinations have been conducted via video conferencing since April 2020.

Examination candidates must register their interest using the electronic form available on the Board's website <http://www.propertyagentsboard.com.au/exams2.html>.

An examination time will be allocated and instructions regarding the process will be forwarded.

Candidates should allow up to 3.5 hours to complete the examination.

Equipment

Examination candidates need to have access to a device (computer/mobile/tablet) with a camera and microphone and an area that would be private and quiet during the examination.

Expectations

The Board expects that exam candidates will comply with examination conditions and instructions.

Results

Candidates will be notified of exam results by email – you should allow at least 5 working days from the day the examination is posted back to the Board.

Exams held

There has been a total of 130 virtual examinations held since April 2020.

A total of 89 virtual examinations have been held this year compared to 103 classroom style examinations held between July and October 2019.

Infringements

Under Section 167 of the Act, infringement notices can be issued and served where an infringement offence is committed against the Act or the Regulations.

The Regulations provide for an amount for each offence in accordance with Schedule 2 Part 1 of the Regulations. Infringement offence amounts can range from 5 penalty units for an individual up to 300 penalty units for a body corporate. It should be noted that offences are prescribed in 'penalty units' which are indexed annually under the *Penalty Units and Other Penalties Act 1987*.

Whilst the issuing and serving of valid notices is the purview of the Board, the Monetary Penalties and Enforcement Services (MPES) of the Department of Justice collects these infringement notice penalties (fines) which are payable into the Tasmanian Government's Consolidated Fund.

A key driver for issuing an infringement notice is to promote professionalism among property agents and to deter repeat offenders via behavioural change.

Thirty-seven show cause letters were issued during 2019-2020. A show cause letter commences proceedings to issue an infringement notice against a person. In the show cause letter a person is invited to make submissions by a certain timeline to explain why an infringement notice should not be issued against them or why their conduct does not warrant further action by the Board.

If there is no response to the show cause letter, the Board will issue an infringement notice.

If a reply is received to the show cause letter and the Board accepts the submissions made by the person that no further action is warranted, an infringement notice is not issued.

If the Board does not accept the submissions from the person, it will issue an infringement notice.

A total of eight infringement notices have been issued during the financial year. Seven of the infringement were issued for a breach of trust accounting requirements. One infringement was issued for a breach of Section 34 of the Act (conduct a real estate agency business whilst not licensed).

Complaints

There were 55 conduct complaints received by the Board during 2019-2020, of which 36 were finalised and 19 remained outstanding as at 30 June 2020.

A snapshot of the complaint statistics dealt with during 2019-2020:

- 16 complaints were carried forward from 2018-2019;
- 55 complaints were received during the year;
- 52 complaints were concluded during the reporting year;
 - 32 matters were dismissed pursuant to Section 92 of the Act:
 - 3 were considered misconceived;
 - 29 were considered lacking in substance;
 - 14 investigations were undertaken. From those matters investigated:
 - 8 were dealt with under Section 100(a) of the Act and dismissed, as the Board was satisfied that there was insufficient evidence to substantiate the complaint;
 - 4 complaints were considered as amounting to minor misconduct that could be adequately dealt with by the Board, which resulted in 4 reprimands and 1 required an undertaking from the property agent;
 - 2 matters were referred to the Tribunal. The Board engages legal counsel to represent it at the Tribunal. Many of the complaints dealt with during the year were more complex in nature, which required the Board to seek independent legal advice;
 - 6 matters were withdrawn by the complainant.

Property Agents Tribunal

The Tribunal has responsibility for hearing and determining an appeal against a decision by the Property Agents Board (the Board) to refuse to grant or renew a licence; an appeal against a Board decision relating to a conduct complaint; or a referral by the Board for a conduct disciplinary matter.

In accordance with section 101(7)(c) of the Act, a conduct disciplinary matter must be referred when the Board decides that a complaint about the conduct of a property agent involves more than minor misconduct.

The process

The Registrar forwards the appeal or the referral of a conduct complaint to the President of the Tribunal. The President of the Tribunal then selects the two other Tribunal members from the panel. In accordance with Section 104 of the Act, one Tribunal member must be a property agent, and the other member a person who represents the interests of consumers.

Directions hearing

A directions hearing is normally conducted by the President of the Tribunal, and usually lasts between 10-30 minutes. Most parties are present in person, but teleconference facilities are used when appropriate.

At directions hearings, the President sets a date for the hearing, and makes directions regarding the documents which must be exchanged between the parties and the timeframes for submission of those documents to the Tribunal. It is normally directed that all documents and other communications with the Tribunal, be also forwarded to each other party.

There can be more than one directions hearing required before the matter proceeds to a hearing, for example if jurisdictional, extensions of time, or other rulings are required.

The Tribunal

The Tribunal conducting the hearing consists of the President and two members, with the Registrar providing administrative support.

The duration of hearings varies according to the extent and complexity of matters but is usually at least several hours.

The public is not admitted to hearings, unless the Tribunal considers that it is in the public interest to do so (section 109 of the Act).

Decisions

Tribunal decisions are normally reserved. The Tribunal confers subsequent to the hearing, in order to reach a decision. A written decision is provided by the Registrar to the parties.

Decisions are not published by the Tribunal as section 112(5) of the Act states that the Board may publish Tribunal decisions in such manner as it considers will best bring it to the attention of those affected or likely to be affected by the decision.

The President may make a recommendation to the Board if it is considered that the matter should be published to a wider audience than the parties, because of educative value or otherwise.

Action taken by Tribunal

Action that can be taken by a Tribunal is identified at Section 110 of the Act, which provides:

- (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;
 - (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 in 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.

Costs

Section 111 of the Act provides that the Tribunal may make determinations with respect to costs.

Appealing a Tribunal decision

Section 117 of the Act enables a person, including the Board, to apply under the Magistrates Court (Administrative Appeals Division) Act 2001 for a review of the decision of the Tribunal.

If a notification from the Magistrates Court is received advising of an appeal, the Tribunal will usually request that the Board be made a party to the appeal (if the Board has not previously applied to be joined to the appeal).

The Registrar then tenders all documents pertaining to the Tribunal decision to the Magistrates Court. Otherwise, the Tribunal submits to the jurisdiction of the Court, and plays no further part.

Property Agents Board

Our organisational structure



Board's website

The Board continually reviews, updates and improves the contents of its website to provide the most up to date information for the property industry on property regulation matters in Tasmania.

Your feedback is important to us and if you have any suggestions for improvement on the website we look forward to receiving your views via our contact us enquiry form which can be located [here](#).

Annual Report

The Board's Annual Report for 2019/2020 has now been tabled in the Tasmanian Parliament and a copy, together with previous annual reports, can be found [here](#) where you will find further information about the Board's activities.

Christmas Closing

The Board Office will be closed from midday Thursday 24 December 2020 until Monday 4 January 2021.

For matters which require urgent attention during this period, the Executive Officer may be contacted on 0412 608 459.

The Board and its staff wish you a very Merry Christmas and a happy, healthy and prosperous 2021.

*Let's gather again in 2021 and
make it a ripper of a year 😊*

