

Publication of Board and Tribunal Decisions

GOVERNANCE

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CONTEXT AND BACKGROUND

The Property Agents Board (the Board), is the statutory authority responsible for property agents in Tasmania.

Amongst other things, the functions of the Board are:

- to receive, investigate and determine complaints against property agents;
- to advise property agents on appropriate standards of conduct; and
- to perform educational functions for the purpose of the *Property Agents and Land Transactions Act 2016* (the Act).

OBJECTIVE

The objective of this policy is to provide advice to the property agents industry to understand when and in what format the Board may publish decisions of the Board and decisions of the Property Agents Tribunal (the Tribunal).

SCOPE

This policy applies to all disciplinary matters before the Board and the Tribunal.

POLICY PRINCIPLES

The Board may change policies relevant to the publication of Board and Tribunal decisions. However, the property agents industry will be notified of all amended policies which will be published on the Board's website to ensure that property agents are aware of any changed requirements.

WHAT IS PUBLICATION?

An agreed definition of publication is to disseminate content or information or provide access to the public or a section of the public of that content or information by any means.

The forms of publication that the Board may employ include media releases, Information Bulletins, correspondence and documents that can be accessed on the Board's website (<http://www.propertyagentsboard.com.au/>).

LEGISLATIVE FRAMEWORK

Tribunal Decisions

Section 112 of the Act states as follows:

"112. Notice of action

(1) This section applies when the Tribunal has concluded a hearing.

(2) The Tribunal must as soon as practicable give written notice of its decision and its reasons for making that decision to the Board, the property agent and the complainant.

(3) The notice must specify –

(a) any action it has taken under [section 110](#); and

(b) any right, in respect of a review of a decision under [section 117](#), that the property agent may have; and

(c) details of any order for costs that the Tribunal has made.

(4) Action taken by the Tribunal under [section 110](#) does not take effect until the end of the period within which the property agent may apply for a review against the decision.

(5) Upon a decision of the Tribunal taking effect, the Board may publish the decision in such manner as it considers will best bring it to the attention of those affected or likely to be affected by the decision.”

Section 112(5) of the Act therefore provides the Board with a discretion to publish Tribunal decisions after the decision of the Tribunal takes effect which is the appeal period for a decision of review of the Tribunal.

The Appeal period is discussed in section 117 of the Act and is reproduced below:

117. Review of decisions of Tribunal

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

The appeal period for a review is 28 days after the decision has been provided to all parties and is prescribed under section 17 of the [Magistrates Court \(Administrative Appeals Division\) Act 2001](#). Accordingly, if publication is to occur, it must not occur until after the review period for appeal has been exhausted, that is after 28 days.

Board disciplinary decisions

The Act is silent in relation to the publication of Board decisions relating to disciplinary action undertaken which suggests that more caution should be considered.

Further, the Board operates on the premise that disciplinary matters are treated in the utmost confidence and this confidentiality aspect is enforced with section 169 of the Act which is reproduced below.

169. Confidentiality

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

(a) for the purposes of –

(i) this or any other Act; or

(ii) a law of another jurisdiction, whether Australian or not, that corresponds to the relevant provisions of this Act; or

(b) with the consent of the person to whom the information relates; or

(c) for the purposes of legal proceedings; or

(d) in accordance with a requirement or authority made or conferred by law.

Penalty:

Fine not exceeding 500 penalty units.

Discretionary power and reference to the public interest

With any discretionary power, the Board should take into account its role as a regulator which is to ensure that there are adequate standards within the property agents industry by implementing and enforcing the code of conduct, its enabling legislation and regulations and imposing supervision on the oversight of the property agents industry for the benefit of the public at large.

If it is in the public interest to publish the findings of a disciplinary decision, the Board must find a balance between releasing sufficient information so that learning can be made from the complaint and not publishing information that directly or indirectly identifies the Complainant(s), who may have been provided with an assurance of confidentiality, or the Property Agent(s) who is the subject of the complaint.

BOARD'S POSITION – EDUCATIVE ROLE AND FORMAT

The Board considers the primary reason for publication of Board and Tribunal matters is for an educative purpose which is best served with the publication of a short de-identified case summary.

However, if in the public interest, the Board may publish a full de-identified decision of a Tribunal. The President of the Tribunal has indicated that in future decisions, the Tribunal will indicate whether, in its view, a matter should be published in a format other than a de-identified case summary as it is in the public interest to do so.