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ISSUE 33

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CURRENT LEGISLATION

PROPERTY AGENTS AND LAND TRANSACTIONS ACT 2016
 PROPERTY AGENTS AND LAND TRANSACTIONS REGULATIONS 2017
 2022 CODE OF CONDUCT - VERSION 4

Fee units are automatically indexed every financial year and are \$1.70 for 2022-2023.
 One Penalty unit is \$181.00 for the 2022-2023 financial year.

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*Merry Christmas, Boas Festas! Joyeux Noel, Srećan Božić, 聖誕快樂,
 Häid Jõule Geseënde Kersfees, Veselé Vánoce, Nadolig Llawen
 สุขสันต์วันคริสต์มาส, Selamat Hari Krismas
 or BAH Humbug*

Season's Greetings

The Board together with its staff wish you a
 Merry Christmas and a happy, healthy and prosperous 2023

Property Agents Board

The full list of duties of the Board are set out in Section 6 of the Act. They include:

- to administer the licensing system for property agents established by this Act and maintaining the Register;
- to ensure that property agents comply with the requirements of this Act to take appropriate action, including disciplinary action, to protect the public and to discourage such conduct;
- to ensure that people do not act as property agents unless they are permitted to do so under this Act;
- to receive, investigate and determine complaints against property agents;
- to supervise the trust accounts of property agents;
- to advise property agents on appropriate standards of conduct

The Board

There are five members of the Board appointed by the Governor.

The Chair must be a legal practitioner of at least five years' standing and who has legal experience in areas of law relevant to the position. Two members must be property agents who have at least five years' experience as property agents. Two members of the Board must not be property agents.

The Board membership is:

Craig Mackie	Chair
Adrian Kelly	Property Agent Board Member
Andrew Wright	Property Agent Board Member
Belinda Webster	Non-Property Agent Board Member
Liz Rodd	Non-Property Agent Board Member

The Board meets monthly (except January) and the procedure in which a meeting is conducted is set out in Schedule 1 of the Act.

A meeting of the Board is not open to the public, but the Board may allow a person to attend a meeting if it is satisfied that it is appropriate to do so.

Board Staff

The Property Agents Board is supported by a team of six staff:

- a Business and Operations Manager (currently vacant)
- a Complaints Officer – Cheryl McCulloch;
- an Examination Coordinator – Tom Bligh;
- the Executive Officer – Alicia Hutton;
- a Licensing Coordinator – Cathryn Harrison;
- an Office Administrator – Catherine Reading.

The Board engages a Board Inspector on a casual basis to conduct inspections of property agent's trust accounts.

A Complaints investigator is also engaged on a casual basis to assist with complaint handling.

The Board also retains the services of external lawyers and counsel, as required and when prosecuting matters in either the Tribunal or Magistrates Court.

Contact Hours

The Board has recently changed its public contact hours to 9:00am – 4:00pm.

Contact us

There are different ways to contact the Board staff.

Email – board@propertyagentsboard.com.au

Telephone – 6281 3480

Website - www.propertyagentsboard.com.au

Christmas Closing

The Board Office will be closed from 10am, Friday 23 December 2022 until Monday 9 January 2023.

Be Aware....Right Now....Coming Up

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 2023 a Trust Account Report for the six months ended 31 December 2022.

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

The Trust Account Report must be completed by the managing property agent named in the Board’s Register.

Copies are available on the Board’s website [here](#)

Warning – A fee of \$78.20 applies for late lodgement of each Trust Account Report.

CPD Requirements

The Board imposes a CPD condition on all individual property agent licences. The CPD condition is identified on the property agents’ licence under the word “Conditions”.

The Board imposes various CPD conditions and it is imperative that a property agent is aware of the condition imposed on their own licence and that they ensure that the CPD undertaken satisfies their CPD condition.

Don’t forget the CPD completion date is in line with the renewal period of **30 April**.

Use the Online Portal to submit your completed CPD. The Online Portal lets you keep track of the CPD already declared.

New licence condition to commence 1 July 2023

From 1 July 2023 there will be a new condition added to all licences. The condition will require the licensee to notify the Board of any change in the person’s name, business address or contact details.

This isn’t going to be difficult as these details can be changed through the online portal.



UPDATE PERSONAL INFORMATION



CHANGE EMPLOYER DETAILS

Compliance Action – Residential Tenancy Commissioner

The Residential Tenancy Commissioner (RTC) recently wrote to the Board to raise concerns about an emerging practice in dealing with tenant applications.

The RTC wants to remind property agents of their responsibilities under the *Residential Tenancy Act 1997* (RTA) in relation to requiring or receiving money from a prospective tenant for the purpose of making an application to rent a residential property.

Under the RTA it is an offence to receive from a tenant or a prospective tenant any money or other consideration for entering into, renewing, extending or continuing a residential tenancy agreement other than for the purposes of rent in advance, a security deposit or a holding fee.

This includes tenancy application platforms that request prospective tenants to pay a sum of money to progress their application.

The RTC advised it would keep a watching brief and has stated that it will take compliance action as appropriate.

Licence fees from 1 April 2023

The second component of the licence fee increase applies from April 2023 and will be:

Licence type	2023 Licence fees
Real Estate Agent carrying on business (P1D1)	\$464.10
Real Estate Agent (P1D2)	\$418.20
Property Manager carrying on business (P2D1)	\$464.10
Property Manager (P2D2)	\$418.20
General Auctioneer carrying on business (P3D1)	\$464.10
General Auctioneer (P3D2)	\$418.20
Property Representative (P4)	\$418.20

Reduced Licence fee for Property Representative applications received after 1 April.

The Board has determined that it will reduce the licence fee payable for property representative licence applications received after 1 April and assessed prior to 30 June.

The renewal process is unchanged. The property representative will be required to pay the full licence renewal fee if it is their intention to be licensed in the next licence year.

Example

Application Assessment Fee	\$157.40	usual fee
Licence Fee	\$209.10	reduced licence fee
Licence Renewal Fee	\$418.20	usual fee

Automatic Mutual Recognition (AMR)

Mutual Recognition Amendment Act 2021 (MRA Tas)

Tasmania's *Mutual Recognition Amendment Act 2021* (MRA Tas) commenced on 22 December 2021. MRA Tas adopts the Commonwealth's Mutual Recognition Act amendments to implement the new Automatic Mutual Recognition scheme (AMR).

AMR involves a person already holding a registration/licence in their Home State to be "deemed" registered in another jurisdiction (Second State).

There is no assessment or licence fee paid to the Second State, and the deemed licence continues until the Home State's licence is cancelled. AMR requires a higher level of exchange of information between jurisdictions compared to the existing mutual recognition scheme.

Occupational Licensing (Automatic Mutual Recognition Consequential Amendments) Bill 2022

AMR will affect a range of occupational licences or registrations. Consumer, Building and Occupational Services (CBOS) identified that some amendments were required to several acts including *Property Agents and Land Transactions Act 2016* to facilitate the AMR scheme.

The proposed amendments in the Bill do not change the criteria, terms or conditions of any occupational licence in Tasmania.

The changes ensure that those interstate licensees entering Tasmania to work under the AMR scheme do so on a level playing field with those licensed in this state.

The proposed amendments are also unrelated to any exemptions from AMR.

Provisions providing for the Tasmanian Government to introduce exemptions were given effect by the *Mutual Recognition Amendment Act 2021*.

Exemption from Automatic Mutual Recognition for Property Agents in Tasmania

All licence categories under the *Property Agents and Land Transactions Act 2016* have been temporarily exempted from AMR until 1 July 2023.

Board's position on AMR

The Board considers that Automatic Mutual Recognition for certain occupations would be beneficial to allow fluidity of workers in certain industries and in certain circumstances especially when the occupation has conformity of process and technical requirements.

In the circumstances where there are national consistent regulatory systems fluidity of a person to work between States and Territories for fly-in/fly-out scenarios or for natural disasters would be extremely beneficial, however the Board does not consider that the property industry aligns with these types of scenarios.

Difficulties for AMR in the property industry

The Board considers that there is not yet enough consistency of regulation across jurisdictions for effective implementation of AMR for the property industry.

The Board suggests that the property industry has a much heavier reliance on local knowledge and local licence and legislation differences for consumer protection than other occupational licences. There are different regulatory requirements for the property industry in each jurisdiction.

Existing Difficulty with Mutual Recognition

The Board considers that amongst other things, the current mutual recognition scheme for the property industry has many challenges in relation to the variance of licence categories, performance of regulated functions and standards of educational qualifications.

There are significant difficulties experienced under the current MR Act for the property industry. Due to the local industry nuances a person entering the property industry under the MR Act usually experiences difficulties to comply with the new jurisdiction's legislative requirements and is typically required to undertake targeted professional development activities to be considered competent.

Automatic Mutual Recognition (AMR) cont.

Licence Titles and Functions

Each State has different licence titles. Recognition cannot be based on the licence title, but a review of the functions or activities undertaken for that licence type is required in order to understand what the applicable licence category should be in the Second State.

A person who has automatic deemed registration to carry on an activity is entitled to carry on the activity in the Second State to the same extent that the person is authorised to undertake the activity in their Home State.

“Activity” is not the same as “occupation”. All registered activities need not always be the same in both states, and the purpose is to apply uniformity in activity standards, not that all registration laws must be the same.

Implementation

The implementation of AMR will draw considerably on the resources of the Board over the next six months in order to meet the 1 July 2023. It is also expected that ongoing management of the AMR scheme will impact on the Board’s staffing levels and is likely to result in additional legislative changes needing to be considered.

Safeguards

There are safeguards in place with AMR that are designed to maintain existing standards of consumer protection, and the health and safety of workers and the public.

The licensed person is required to meet appropriate standards including only working within the scope of their existing licence or registration, complying with local laws in the State in which they work and meeting any public protection requirements that apply to their occupation.

AMR is not available if a person is disqualified or suspended from carrying on the occupation or have been refused a licence for that occupation; are subject to disciplinary, civil or criminal action and that they know that they are under investigation; or have conditions placed on their substantive licence as a result of disciplinary or court action.

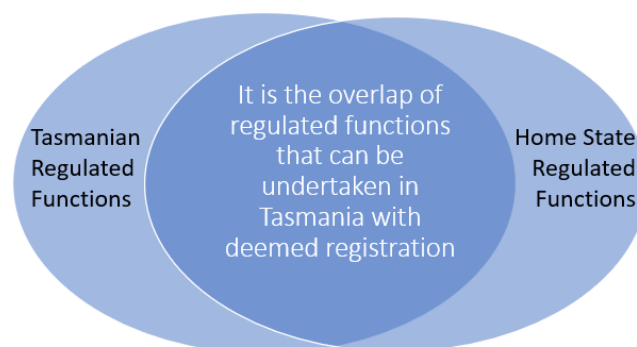
Working with ADR and regulated activities

A person with deemed registration can perform activities permitted by their licence or registration in their home State.

If a Tasmanian licence permits a wider range of regulated activities than the person’s home State, the person is only to perform the activities permitted by their home State licence.

If the person’s home State permits activities that Tasmanian laws do not permit, then the person can not undertake that activity in Tasmania.

While undertaking regulated activities in Tasmania the person is subject to Tasmanian legislation and the complaint handling procedure under the Act.



Eligibility for AMR

To be eligible to work as a property agent in Tasmania using AMR, the person:

- must have a current licence in home State; and
- must notify the Property Agents Board of the intention to work via the Board’s online portal or by submitting the relevant form;
- must complete probity declaration;
- must submit Public Protection documents (National Police Records and Insolvency Check);
- must be employed by a licensed property agent conducting business in Tasmania.

Further details about AMR will be provided in the coming months.

Amendments to Act and Regulations

Property Agents and Land Transactions Act 2016

The *Property Agents and Land Transactions Amendment Act 2020* and *Property Agents and Land Transactions Amendment Regulations 2022* were enacted on 4 May 2022.

The amendments were generally minor in nature and are summarised below.

Interpretation - Section 3 - small changes to the definition of property management business and real estate agency business;

Conditions of licence - Section 20 - addition of the following clause

2(ab) a condition requiring the licensee to notify the Board, in an approved form, of any change in the licensee's name, business address or contact details as soon as practicable after that change;

Qualifications – amendments to **Sections 25,26,27,28** and the addition of Section 28A as below:

The Board may make a determination specifying the qualifications, including national qualifications, that the Board considers are required to be held by a person in order for the person to be granted a –
 real estate agent licence; or
 property manager licence; or
 general auctioneer licence; or
 property representative licence.

Registers - small changes **Sections 30, 31, 32, and 33** with the addition of the word “business” before address. This is to ensure that it is the business address of the property agent published not residential address.

Management of Business – small changes to **Section 36, Section 37** and **Section 60** to indicate that a business is required to be managed by a “natural person”.

Employment provisions - addition to **Section 38** to include clause for real estate agents and property agents to be employed or contracted by a real estate agency business or property management business.

False or misleading advertising – **Section 56** and **Section 65** change to definition and inclusion of defense provisions.

Code of Conduct – Section 84 change to distribution requirements.

Service of Documents – Section 168 additional clause to permit the Board to serve documents by email.

Property Agents and Land Transactions Regulations 2017

The amendments to the Regulations were to repeal **Regulation 41** – this change allows the Board to make the qualification declaration as described in Section 28A of the Act.

Schedule 1 – Fees was amended and a change to the annual licence fees units were made for those fees payable before 1 April 2023 and those payable after 1 April 2023.

Future amendments

Further amendments will be made to the legislation to accommodate AMR – these are contained in *Occupational Licensing (Automatic Mutual Recognition Consequential Amendments) Bill 2022*

The Consequential Amendment Bill amends seven Tasmanian licensing Acts, including the Tasmanian Mutual Recognition Act to enable the AMR system to be fully implemented for certain occupations, by providing that: -

- persons working under the AMR scheme need to comply with the same laws as local licensees; and
- public and consumer protection requirements are maintained for all licensees working in Tasmania; and
- standards of work performed are maintained and are the same for all persons working in Tasmania.

The proposed amendments do not change the criteria, terms or conditions of any occupational licence in Tasmania.

The changes ensure that those interstate licensees entering Tasmania to work under the AMR scheme do so on a level playing field with those licensed in this state.

Publication of Information

Publications

The Board continues to develop publications for use by the industry and the public to understand various aspects of legislative provisions and industry practice. This information is available on the Board’s website.

The website, information bulletins, fact sheets, advice notes and guidelines are part of our educative process and, in part, a way of fulfilling the function of advising on appropriate standards of conduct.

There are over 20 Advice Notes and Guideline publications available on the Board’s website. Copies of the Information Bulletin which is published in June/July and December each year remain on the website for reference purposes.

The published information available dates back to April 2017 which ensures that the information is relevant to current legislative provisions as the Act commenced on 1 April 2017.

For some time the Board has developed Case Studies from complaint outcomes which is designed to inform the industry of appropriate standards of conduct and how the complaint matter has been regarded. There are some 11 Case Studies available on the website.

Publication of Decisions

The Board in September 2021 determined to amend its policy regarding publication of decisions of the Board and the Property Agents Tribunal.

Board Decisions

The Board determined that when it makes a decision which it considered could educate the industry and/or stakeholders, then as previously a short de-identified case study would be published.

However, if it was in the public interest, the Board may publish a full decision or in a hybrid format other than a case summary.

Tribunal Decisions

The Board in consultation with the Tribunal determined that it would publish Tribunal decisions verbatim effective from 15 September 2021.

However, the Board exercises the right to publish a decision with redactions or in a hybrid format. In these circumstances it will be clearly indicated that it is an abridged copy.

The Board has published on its website under the heading Disciplinary Action all Tribunal Decisions since September 2021.

The webpage provides a table which indicates:

- the year of the decision;
- the parties to the matter;
- whether the matter was a conduct complaint referral from the Board or an Appeal of the Board’s Decision; and
- reference to the Determination/Decision.

The Determination/Decision section opens to the detailed publication.

Below is a snip from the webpage showing what type of matter was before the Tribunal, and the outcome.

Conduct Complaint or Appeal	Determination/Decision <small>(click blue words to open)</small>
Conduct Complaint	Professional Misconduct
Appeal of Board Decision	Dismissed
Conduct Complaint	Unsatisfactory Professional Conduct
Conduct Complaint	Professional Misconduct*
Conduct Complaint	Professional Misconduct*
Costs Order	Order for Costs

PI Insurance and claims against Guarantee Fund

Professional Indemnity Insurance

Section 131 of the Act provides that real estate agents, property managers and general auctioneers conducting business must maintain an appropriate level of professional indemnity insurance cover, and that this cover must be provided by an insurance company approved by the Australian Prudential Regulation Authority.

The insurance cover must indemnify the property agent against any liability that the property agent may incur in respect of any loss or damage suffered by other people occasioned by any act, default, omission, neglect or defalcation by the property agent (or by any person employed by or acting on behalf of the property agent) in the course of his or her business as a property agent.

The insurance must cover claims by clients and people who are not clients of the property agent.

As such, the Board will not licence a business until it is satisfied that appropriate professional indemnity insurance is in place, by the applicant providing a Certificate of Currency.

Pursuant to Section 132 of the Act the licence of the property agent is to be taken to have been suspended during any period when the property agent does not have professional indemnity insurance.

Monitoring compliance

The Board's ability to monitor professional indemnity insurance held by property agents conducting business provides an effective channel for it to provide a level of consumer protection.

The Board monitors compliance with the Act by maintaining a robust register of professional indemnity insurance for all businesses which, amongst other things, highlights the date on which the property agent's insurance is due to expire.

The Board is proactive in its engagement with the industry and sends out notifications to those businesses who have not provided a new professional indemnity insurance certificate of currency when its old professional indemnity policy has expired.

Guarantee Fund

The purpose of the Guarantee Fund is to pay compensation for pecuniary loss or loss of property suffered by a person arising from the criminal or fraudulent conduct of property agents acting in the course of business.

Claims against the Guarantee Fund

Defalcation

In 2013 the Property Agents Board was made aware that an amount of money had been stolen by an employee of a real estate agent named in Part 1 (1) of the Register. The money stolen consisted of some 132 security deposits and money owing to creditors, the total amount stolen being estimated was in the vicinity of \$135,000.

As at 30 June 2022, 132 claims had been made totalling \$91,573.59. The breakdown of claims and payments by year is identified below:

Of the total \$91,573.59 of claims paid from the Guarantee Fund, \$71,026.78 has been paid to tenants, \$20,311.53 has been paid to landlords and \$1,235.28 has been paid to providers of rental assistance services.

Claims on Property Agents Guarantee Fund		
Year	No. of claims	Value
2013-2014	44	\$30,831.15
2014-2015	38	\$28,085.53
2015-2016	14	\$9,153.20
2016-2017	13	\$8,285.71
2017-2018	7	\$4,570.00
2018-2019	5	\$3,980.00
2019-2020	6	\$4,520.00
2020-2021	4	\$1,468.00
2021-2022	1	\$1,680.00
Total	132	\$91,573.59

Appointment of Manager and Receiver

There have been two circumstances which has required the Property Agents Board to appoint a manager and receivers. The total amount claimed against the Guarantee Fund in these two circumstances was \$20,700.

CPD, some questions answered

What is CPD?

CPD is the means by which members of the property agents industry maintain, improve and broaden their knowledge, expertise and competence, as well as develop the personal and professional qualities needed throughout their careers.

The Board encourages property agents to broaden their knowledge, seek different types of CPD and, preferably, from a variety of sources.

I want to repeat the same CPD activity I also declared last year to meet my CPD requirements this year? Will this count?

No. The Board considers that the concept of CPD is to expand your knowledge base, so you cannot attribute CPD that you have undertaken in previous licence years towards meeting your CPD points.

Can the Board staff help me choose a CPD activity?

CPD is a personal choice, and it is not appropriate for Board staff to recommend a specific course unless you have a particular requirement of CPD. In that case, Board staff can advise you on what CPD activities are currently approved to meet that particular CPD condition. The *List of Approved CPD activities* is available on the Board's website and is regularly updated with approved CPD activities.

The Board's role is to approve the CPD activities and to ensure you have met your CPD requirements. It is not the Board's role to assist you in meeting your CPD requirements by organising your attendance or making enquiries with the training provider on your behalf.

Who needs to comply with the Board's CPD policy, and how many points are required?

All property agents must meet their CPD condition(s) on their licence. It is imperative that you understand your CPD conditions and the timeframe for completing the CPD requirements.

Can the Board staff complete the CPD declaration form for me?

No. This is your CPD declaration, and it is your responsibility to complete all sections of the CPD declaration.

Will everyone be audited?

No. The Board selects a random number of property agents to be audited at any time throughout the licence year.

If selected for a random audit, you will need to show evidence that you have completed your CPD activity requirements as per your licence conditions for the previous licence period year.

How long do I need to keep a record of the evidence of my CPD compliance?

The Board recommends that you keep evidence of your participation in an approved CPD activity for a period of two years. This ensures that you have evidence to provide to the Board if you are selected for a random audit of CPD.

Do I still need to complete CPD if I am licensed but not working in the property agents industry?

Yes, if you are licensed and seek to have your licence renewed, you must comply with the CPD requirements and policy. Therefore, you must undertake CPD.

Can I carry over CPD points into the next licence period?

Whilst the Board commends your commitment and dedication to ongoing learning, if a property agent participates in more CPD activities than required by the licence condition, these excess points cannot be carried over into the next CPD period.

When do I need to complete my CPD condition?

It is important that you understand when you have to meet your CPD requirements. Your licence tells you what is required. Remember to check the date that your CPD requirement is due, sometimes it is more than 12 months.



CONTINUING PROFESSIONAL
DEVELOPMENT

Licensing

The Board must assess licence applications to ensure that only suitably qualified people enter the industry. The Board assists people seeking to obtain or renew a licence and processes applications in accordance with the Act.

A complete application form includes the application form together with the appropriate accompanying documents and payment of fees. Upon receiving an application for licence a preliminary review is undertaken. This preliminary review provides to the applicant, confirmation that the application has been received, it advises if there are any missing or incorrect documents and it advises when the application will be assessed (the assessment date).

The assessment date is designed to provide certainty to the applicant of when the license will be granted or refused. The service charter in processing time for a complete application is no longer than 15 working days.

On the assessment date the licence applicant will receive notification of whether the licence has been granted or refused.

If the licence is granted the applicant will receive a copy of their licence together with other relevant information.

If the licence is refused the applicant will receive information regarding the grounds that the application has been refused.

All licences are granted by the Board for the period 1 July (or from the date of approval) to 30 June and eligible licence holders can apply for the licence to be renewed each year.

Last call - licence applications prior to Christmas Break

A complete licence application* that is received prior to 14 December 2022 will be assessed on or before 23 December 2022.

Incomplete licence applications or those received after 14 December 2022 will not be assessed until after 9 January 2023.

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

Licence Renewal 2023

The licence renewal period for the 2023-2024 licence year will begin in mid-March 2023.

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

The renewal process involves making a declaration as to the person's suitability to remain licensed; compliance with any licence condition (including CPD) and payment of a licence fee.

The Application for Licence (Renewal) form for a business 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 2023.

Current licence numbers

Licence type	Number
Real Estate Agent carrying on business (P1D1)	233
Real Estate Agent (P1D2)	458
Property Manager carrying on business (P2D1)	9
Property Manager (P2D2)	5
General Auctioneer carrying on business (P3D1)	16
General Auctioneer (P3D2)	16
Property Representative (P4)	1194
Total	1,931

The Register of Property Agents

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.

Once AMR is introduced a separate Register to those who hold a licence in Tasmania would be published. It would be a Register of Deemed Registrations.

Online Portal

The Board launched its online portal during the year

The online portal allows all licensed property agents to:

- Change their personal contact details;
- Change their employer details;
- Declare CPD;
- View previously declared CPD;
- Make a declaration as to being fit and proper to retain a property agent licence (renewal period only).

To log into the Online Portal

<https://portal.propertyagentsboard.com.au/>

1. Choose your licence type;
2. Enter your licence number
3. Enter your mobile phone (use your personal number rather than work number).
4. Tick "I'm not a robot".

If the mobile phone number matches that which is already entered in the Licensing System a SMS code for authentication purposes is sent to your mobile phone.

5. Enter the 6- digit verification code and then click Login

If you haven't used the Online Portal, give it a go now.

Remember you can change your personal and employer details or enter completed CPD information at any time.

The Renew Your Licence function is only available during the licence renewal period commencing in April.

Conducting business licence and Online Portal

The Online Portal can be used for conducting business licenses. The property agent authorised to manage has their contact details linked to the conducting business licence. Just remember to change the licence type and use the conducting business licence number not their individual's.



UPDATE PERSONAL INFORMATION



CHANGE EMPLOYER DETAILS



CONTINUING PROFESSIONAL DEVELOPMENT



RENEW YOUR LICENCE

Qualifications required for licence

The Board is to make a determination specifying the qualifications required to be held by a person in order for the person to be granted a property agent licence.

Real Estate Agent

Pursuant to Section 28A of the *Property Agents and Land Transactions Act 2016* (the Act) the Property Agents Board has determined the Qualification required in order for a person to be granted a Real Estate Agent Licence is:

A Diploma of Property (Agency Management) CPP51122 awarded by a Registered Training Organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;

or

Until June 2025 a Diploma of Property (Agency Management) CPP51119 awarded by a Registered Training Organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

Property Manager

Pursuant to Section 28A of the *Property Agents and Land Transactions Act 2016* (the Act) the Property Agents Board has determined the Qualification required in order for a person to be granted a Property Manager Licence is:

A Diploma of Property (Agency Management) CPP51122 awarded by a Registered Training Organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;

or

Until June 2025 a Diploma of Property (Agency Management) CPP51119 awarded by a Registered Training Organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

General Auctioneer

Pursuant to Section 28A of the *Property Agents and Land Transactions Act 2016* (the Act) the Property Agents Board has determined the Qualification required in order for a person to be granted a General Auctioneer Licence is:

A Diploma of Property (Agency Management) CPP51122 and CPPREP4505 Value Goods, chattels, plant and equipment and CPPREP4509 Auction goods, chattels or equipment awarded by a Registered Training Organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;

or

Until June 2025 a Diploma of Property (Agency Management) CPP51119; and CPPREP4505 - Value Goods, chattels, plant and equipment; and CPPREP4509 - Auction goods, chattels or equipment. awarded by a Registered Training Organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

Property Representative

Pursuant to Section 28A of the *Property Agents and Land Transactions Act 2016* (the Act) the Property Agents Board has determined the Qualification required in order for a person to be granted a **Property Representative Licence** is the successful completion, within the previous 2 years, of an examination for property representatives administered by the Board.

This information is published on the Board's website.

Complaints

Complaint Types

The Board categorises who has made a conduct complaint in terms of the transaction position of the complainant.

The “other” category is used when the complainant does not fall within the 4 client/customer category. In the last financial year 18 complaints were categorised as other, being 10 property agents making a complaint against another property agent; the Board initiating a conduct complaint of its own volition (7) and one person who was a guest for an Airbnb property.

Complainant Type	Last year	This year
Landlord	7	17
Other	14	18
Purchaser	20	19
Tenant	21	12
Vendor	2	9
Total	64	75

The number of complaints has risen from the previous 12 months from 64 in 2020-2021 to 75 in 2021-2022 and so too has the complexity of some complaints being dealt with.

Complex complaint matters draw on the Board’s resources with more time and complaint experience being required to investigate the matter.

The outcome of matters finalised during the financial year are as follows:

Complaint Results 2021-2022	
Withdrawn	5
Over 12 Months - not in public interest	2
Summarily Dismissed - Lacking in Substance	34
Summarily Dismissed - Misconceived	2
Summarily Dismissed - Frivolous	1
Investigation - Not Substantiated	10
Investigation - Substantiated - Caution	5
Investigation - Substantiated - Reprimand	5
Investigation - Referred to Tribunal	9
Total	73

No longer licensed

A complaint may be made about the conduct of a property agent by any person.

There is a misconception that the once a property agent is no longer licensed that disciplinary action cannot be taken against the property agent.

Property agents who are no longer working in the industry appear to be more reluctant to provide information than those still working in the industry.

If necessary, the Board can serve a notice which compels the property agent to provide the Board with written information verified by statutory declaration; or to produce a specified document; and to otherwise assist or cooperate with the Board in the investigation of the complaint.

Determining a complaint

The Board can summarily dismiss a complaint – if it is lacking in substance, misconceived or frivolous.

If information is not provided, then the matter progresses to an investigation. After an investigation, if the Board considers that there is insufficient evidence to substantiate the complaint, it will be dismissed under Section 100(a) of the Act – not substantiated.

If the evidence collated during an investigation indicates that the conduct amounts to minor misconduct, the Board may deal with the matter itself pursuant to Section 101 of the Act – Caution; Reprimand; and/or written undertaking.

The Board must refer the matter to the Tribunal if the Board considers that the conduct amounts to more than minor misconduct.

The only exception to this is if while considering a conduct complaint the Board believes that the evidence it has indicates that a person has committed a criminal offence.

In that case the Board must suspend its consideration of the complaint and provide the evidence to the Commissioner of Tasmania Police.

Examinations

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.

The Board conducts examinations in Hobart, Launceston and Ulverstone each month as shown below. There were 322 examinations conducted during the year.

Region	Exam No.
Hobart	163
Launceston	112
Ulverstone	47
Total	322

The Board offers special provisions to candidates who have a pre-existing condition which impacts their ability to undertake the examination.

Board staff work with the candidate to understand and respond to the needs of that candidate, such as providing additional time, technology or alternative exam delivery.

There is no requirement to undertake any form of training prior to attempting an examination.

Examination Results by attempt		
	Number	percentage
1 st Attempt Successful	163	67.08%
1 st Attempt Unsuccessful	80	32.92%
2 nd Attempt Successful	47	72.31%
2 nd Attempt Unsuccessful	18	27.69%
3 rd Attempt Successful	9	75.00%
3 rd Attempt Unsuccessful	3	25.00%
4 th Attempt Successful	2	100.00%
4 th Attempt Unsuccessful	0	0.00%
Total	322	

Examination process

Candidates express an interest to sit the property representative examination through the Board website portal.

An acknowledgement and invoice for payment is sent to the exam candidate via return email.

Payment is required 7 days prior to the examination date.

The exam time is confirmed via email when payment is received and additional information is provided to the candidate.

Changing a booked examination?

Changes to booked examinations can be made up to 7 days prior to the examination date.

If the exam candidate reschedules an examination with notice, the examination fee can be transferred to the new examination sitting date.

If the exam candidate does not attend (no-show) the scheduled examination date, then the examination fee is forfeited.

Exceptions will be considered due to extenuating circumstances and at the discretion of the Board (a medical certificate or statutory declaration may be required).

Commencement Times

Starting times are advised to the examination candidate as different examination locations have different examination times.

Candidates should allow up to 3 hours 15 minutes to complete the examination.

Results

Candidates are notified of exam results by email. Results are provided between 7 - 10 business days from the date of examination.

Agency Agreements

Termination Clauses

For **sales agreements**:

- The termination clause can only be to a **maximum of 30 days'** notice. It can be less than 30 days but no more. Termination can be initiated by either party.

The agency is still obliged to continue to work for the client until the termination period expires; and

- The agreement can be for no longer than **120 days** (this time limit doesn't apply to agreements involving property development).

For **property management agreements**:

- The Termination clause has a **minimum of 30 days'** notice. The termination period can be more than 30 days but no less. Termination can be initiated by either party.
- The agency is still obliged to continue to work for the client until the termination period expires.

Sales authority – 120 days maximum

The maximum period of a sales authority is 120 days. The Act specifies that an agreement expires after 120 days.

This means that an agency agreement cannot be extended (even by mutual agreement between the parties) past 120 days.

Whose listing is it?

An agreement to sell (listing authority) or manage property (management agreement) is between the agency business and the client. It is not an agreement between the individual property agent and the client.

If a property agent changes employment the listing authority or management agreement must remain with the agency business (until it expires or is terminated on the terms as identified by the agreement).

Commission paid on termination or expiry of agreement.

Section 45 of the Act outlines details of when a real estate agency business is entitled to claim commission after a written appointment expires (or is terminated).

The provisions state that when the agreement finishes (on expiry or if terminated) and if within the next 90 days the vendor sells the property to a purchaser introduced during the agency period, the agency is entitled to claim commission but from day 91 the agency has no claim to commission.

BUT

When the agreement finishes (on expiry or if terminated) and the vendor enters an agency agreement with a different real estate agency business and the property sells to a purchaser introduced during the original agency, the first agency is not entitled to commission.

Approaching a person already under agency

The Australian Competition and Consumer Commission (the ACCC) made rulings with regards to an agency being able to contact a person who is a client of another agency.

The Property Agents Board does not consider a property agent providing promotional material to another agency's vendor as being misconduct. However, it is important to ensure that material provided does not contain advertising or information that is false or misleading.

An agency must not encourage a client of another agency to cancel a valid agreement outside the provision of the original agreement.

Further, clients must not be encouraged to terminate an agreement when a property agent changes employment to a new agency.

Case Study - Complaint over 12 Months – Not in the public interest

The Complainant purchased a business (the Business) which was listed by the Property Agent.

The Complainant alleged that the Property Agent “...engaged in misleading and deceptive conduct and behaved in an aggressive, opportunistic and unethical manner in his dealings with us...” on the basis that he represented the Business “...in a very positive position of profitability... reinforced by the assertion that the Vendor would remain in the business as a manager for a period of 18 months at a salary of \$100,000 per annum with a further 10% share of the profits.”

After taking over the business the Complainant’s turn-over was reportedly nowhere near sufficient to cover the expense of keeping the Vendor employed and claimed that, if anything, the Business was running at a loss and subsequently the business was sold.

The Complainant lodged a complaint against a Property Agent with the Board (the Complaint).

Further allegations made by the Complainant included:

- That there were environmental and stock trading constraints of which they were not made aware, including but not limited to the frequency of extreme weather conditions;
- The value attributed to the stock was misleading on the basis that a substantial quantity was of poor quality and had to be discarded because it was unsaleable;
- The claim that the machinery included in the sale was maintained in good working order was incorrect; and
- They were not made aware of the “substantial annual levy payable”.

To support the Complaint the Complainant provided the Board with information and marketing material that had been given by the Property Agent.

The Board noted that the Prospectus contained two disclaimers, indicating that all information contained in the document was provided by the Vendor verbally and in the form of books, records and accounts relating to the Business and had been accepted in good faith.

However no warranty was given as to its accuracy or otherwise and the onus was with any prospective purchaser to verify the accuracy of the information.

The Prospectus also contained a declaration by the Vendor which stated that the information contained within the prospectus was to their knowledge correct and a fair

indication of the proposal and its offerings. It also stated that it was expected that any prospective purchaser would seek their own professional advice before making any decision.

The Complainant did not indicate on the Complaint Form how they believed the Complaint could be reasonably resolved.

The Board notes the Complainant’s claim that they sustained a financial loss in excess of \$400,000 in respect to the purchase, ownership and subsequent sale of the business.

The Legislation

The Board must consider Section 88 of the *Property Agents and Land Transactions Act 2016* (the Act) in relation to time limits for complaints. Section 88 of the Act provides:

- (1) *A complaint cannot be dealt with (otherwise than to dismiss it) if the complaint is made more than 12 months after the conduct complained about is alleged to have occurred, unless the Board determines that –*
 - (a) *it would not cause injustice to deal with the complaint; or*
 - (b) *it is in the public interest to deal with the complaint.*
- (2) *Subject to subsection (1), the Board may deal with a conduct complaint although the conduct complained about is alleged to have occurred before the commencement of this section.*

The relevant period was more than four years before the Complaint was made to the Board.

Submissions – Public Interest

The Complainant was asked to provide submissions detailing why it would not cause injustice to deal with the Complaint and/or why it is in the public interest to deal with the Complaint.

The information subsequently provided by the Complainant included but was not limited to the following:

- The Property Agent presented false and misleading figures when the Business was advertised and they “relied upon what was presented to us by the agent”;
- They were “rushed into the purchase by the agent who suggested that other buyers were interested in the business and if it wasn’t sold soon, it would be withdrawn from sale...”;

- *“The course of conduct the agent followed in ‘selling the business at all costs’ is completely against the public’s interest”;*
- When contacted by their Barrister in requesting substantiation of the figures contained in the Property Agent’s correspondence to the Complainant and the Prospectus, the Property Agent did not respond, implying that he was unable or unwilling to do so;
- The Complainant could not afford to pay the full asking price and was unable to secure finance for the full funds so the Property Agent negotiated a vendor finance arrangement, which the Complainant stated was in breach of section 19(1)(h) of the Code of Conduct, which relates to property agents refraining from encouraging clients, customers or colleagues to give, lend or bequeath money, gifts or property;
- The Complainant allegedly told the Property Agent that they had never purchased a business before and that they had never lived or worked in Tasmania; and
- *“... If the Property Agent is allowed to get away with it on this occasion, what is there to say that other well-intentioned members of the community will not suffer the same fate as we have?”*

What is in the Public Interest?

The term public interest is not defined in the Act. Reference is accordingly made to common law definitions which are based on the generally accepted concept that the ‘public interest’ is that which provides benefit to society, the public and the community as a whole.

This meaning has been considered by the Australian law courts on many occasions.

In the Appeal Division of the Supreme Court of Victoria in *Director of Public Prosecutions v Smith* [1991] 1 VR 63, Kaye, Fullagar and Ormiston JJJ at p75 of the judgment stated:

The interest is therefore the interest of the public as distinct from the interest of an individual or individuals.

In the Full Court of the Federal Court of Australia case of *McKinnon v Secretary, Department of Treasury* [2005] FCA FC 142, His Honour Justice Tamberlin said at 245:

The expression ‘in the public interest’ directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances...

The expression ‘the public interest’ is often used in the sense of a consideration to be balanced against private interests or in contradistinction to the notion of individual interest.

Therefore, the Board must consider whether the interest is a public interest or a personal or individual interest, noting that sometimes an individual interest can also be a public interest if it could impact society as a whole depending on the particular circumstances of the matter.

Consideration as to whether public interest has been established

Timing

The Board did not consider any relevant information was provided to support the claim that it should accept the complaint outside the statutory timeframe of 12 months, nor had the Complainant provided any explanation as to why they did not submit a complaint earlier.

Summary

The Board accepted that consumer confidence in the property agents industry was a public interest consideration. However in considering all of the circumstances of the matter, the Board concluded that the Complainant had not provided sufficient evidence to demonstrate that it was in the public interest for the Board to accept the complaint.

Decision

The Board having considered the provisions of Section 88 of the Act determined that it was not in the public interest to deal with the complaint and therefore dismissed it.

Footnote:

The Complainant appealed the Board’s Decision to the Property Agents Tribunal.

The Tribunal upheld the Board’s Decision.

The Board applied to the Tribunal for the Complainant to pay the Board’s costs as the appeal was not successful.

The Tribunal made an order for the Complainant to pay costs to the Board.