

Market Update

NOVEMBER 2019

Extended powers for the REA Disciplinary Tribunal are now in force

AT A GLANCE:

- On 29 October 2019 the Real Estate Agents Disciplinary Tribunal gained the jurisdiction to order a licensee to pay compensation of up to \$100,000 where they are found guilty of unsatisfactory conduct.
- The threshold for unsatisfactory conduct is lower than the previous threshold of misconduct.
- On 29 October 2019 the Disputes Tribunal jurisdiction also increased to \$30,000.

In December 2018, we provided an update on the changes to the *Real Estate Agents Act* and upcoming changes to the powers of the Disputes Tribunal and the Real Estate Agents Disciplinary Tribunal. These changes have now come into force.

From 29 October 2019, the Real Estate Agents Disciplinary Tribunal has the jurisdiction to order a licensee to pay compensation of up to \$100,000 where a licensee is found guilty of unsatisfactory conduct. This is the most recent change to come into effect from the significant amendments made late last year to the *Real Estate Agents Act 2008*.

Until recently, the Tribunal was only able to award compensation of up to \$100,000 where a licensee was found guilty of misconduct, if the person receiving the payment had suffered loss as a result of the misconduct.

The Tribunal's power now extends to allow it to order a licensee to pay compensation of up to \$100,000 after a finding of unsatisfactory conduct. The threshold for establishing unsatisfactory conduct is significantly lower than the threshold for misconduct.

If the Tribunal makes the finding of unsatisfactory conduct, it can order a payment of compensation where:

- the unsatisfactory conduct is more than just a minor or technical breach of the Act (or rules made under it); and
- a court could make such an order regarding a similar claim and in line with principles of law.



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If a finding of unsatisfactory conduct is made by the Complaints Assessment Committee (CAC), a two-step process will follow:

- 1) In addition to considering the range of orders open to a CAC (under section 93 of the Act), it will assess whether the conduct is more than just a minor or technical breach of the Act. If so, the CAC may refer to the matter to the Tribunal to consider whether a compensation order should be made.
- 2) The Tribunal will then consider whether:
 - a person has suffered loss because of the unsatisfactory conduct, and
 - a court could make such an order about a similar claim and in line with principles of law.

If so, the Tribunal may order the licensee to pay compensation of up to \$100,000.

While the Tribunal has for some time been able to award compensation of up to \$100,000 for a finding of misconduct in circumstances where the person receiving payment had suffered loss as a result of the misconduct, there is now an additional gloss on this.

The Tribunal can award up to \$100,000 in the same circumstances, but it is now also limited by whether a court could make such an order about a similar claim and in line with principles of law.

At this stage it is unclear whether these changes will lead to more frequent, larger orders for compensation. The Tribunal has previously been reluctant to order compensation in cases of misconduct, but it remains to be seen whether this will change with the Tribunal's new powers and whether its previous reluctance will apply to cases of unsatisfactory conduct.

The changes are only intended to apply to conduct that occurs after 29 October 2019 so should not affect any complaints currently before the REA.

For detail on all of the November 2018 amendments to the *Real Estate Agents Act 2008*, please refer to our 3 December 2018 Broker Update [Changes to the Real Estate Agents Act – what you need to know](#).

DISPUTES TRIBUNAL JURISDICTION INCREASED TO \$30,000

From 29 October 2019, the threshold for claims that can be brought to the Disputes Tribunal increased from \$15,000 to \$30,000.

With its increased jurisdiction to award damages of up to \$30,000, there may be an increase in the claims against landlords, property managers and real estate agents brought in the Disputes Tribunal.

Need to know more?

For more information please contact us.



Sophie Lucas
Partner (Auckland)
T: +64 9 377 1870
sophie.lucas@wottonkearney.com



Natasha Cannon
Senior Associate (Wellington)
T: +64 4 974 5759
natasha.cannon@wottonkearney.com



James Dymock
Senior Associate (Auckland)
T: +64 9 377 1879
james.dymock@wottonkearney.com



Caitlin Barclay
Solicitor (Wellington)
T: +64 4 260 3990
caitlin.barclay@wottonkearney.com

Auckland

Level 18, Crombie Lockwood Tower
191 Queen Street, Auckland 1010
T: +64 9 377 1854

Wellington

Level 13, Harbour Tower
2 Hunter Street, Wellington 6011
T: +64 4 499 5589