Queensland

Property Agents and Motor Dealers Act 2000

Reprinted as in force on 21 August 2006

Reprint No. 2I

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Property Agents and Motor Dealers Act 2000

[as amended by all amendments that commenced on or before 21 August 2006]

An Act to comprehensively provide for the regulation of the activities, licensing and conduct of resident letting agents, real estate agents, pastoral houses, auctioneers, property developers, motor dealers and commercial agents and their employees, to protect consumers against particular undesirable practices, and for other purposes

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Property Agents and Motor Dealers Act 2000*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act binds all persons

(1) This Act binds all persons, including the State, and, so far as the legislative power of Parliament permits, the Commonwealth and the other States.

(2) Nothing in this Act makes the State, the Commonwealth or any other State liable to be prosecuted for an offence.

4 Exemption—auctions

Chapter 7[1] does not apply to—

(a) a sale ordered by the sheriff, or a bailiff of the Supreme Court, the District Court or a Magistrates Court, under any process issued out of a court; or

(b) a sale made under a rule, order, or judgment of the Supreme Court or District Court; or

(c) a sale made by a person obeying an order of, or a process issued by, a court, judge or justice, or the registrar of the State Penalties Enforcement Registry for the recovery of a fine, penalty, or award; or

(d) a sale of an animal lawfully impounded and sold under a law about impounding; or

(e) a sale of goods distrained for rent or arrears of rent; or

(f) a sale by postal bids of stamps or coins; or

(g) a sale conducted for a charity, a religious denomination, or an organisation formed for a community purpose, within the meaning of the *Collections Act 1966* (a ***relevant entity***) if—

(i) the person conducting the sale does not receive from the relevant entity a reward for the person's services; and

(ii) amounts received from the sale are paid directly to an officer or employee of the relevant entity who is authorised by the relevant entity to receive and deal with the amounts; or

(h) a sale conducted by or for Magic Millions Sales Pty Ltd ACN 078 396 317 as part of the event known as the Gold Coast Horses in Training Sale if the sale is conducted by a person approved by the chief executive before the sale as a suitable person to conduct the sale.

1 Chapter 7 (Auctioneers)

5 Exemption—public officials

(1) Section 354[2] does not apply to—

(a) a bailiff serving a notice, claim, application, summons or other process; or

(b) a person, other than a commercial agent, who is an enforcement officer or a member of the staff of the State Penalties Enforcement Registry under the *State Penalties Enforcement Act 1999*—

(i) collecting, or requesting payment of, debts; or

(ii) serving a notice, claim, application, summons or other process.

(2) Chapter 12[3] does not apply to a prescribed officer in relation to trust moneys for which the prescribed officer is responsible if another Act makes provision for the way the prescribed officer is required to deal with moneys held by the officer in trust.

(3) In this section—

bailiff means a bailiff appointed under the *Supreme Court Act 1995*, part 12, the *District Court Act 1967* or the *Magistrates Courts Act 1921*.

prescribed officer means—

(a) an accountable officer under the *Financial Administration and Audit Act 1977*; or

(b) a public service officer.

5A Exemption—liquidators, controllers and receivers

(1) This section applies to—

(a) a person, appointed under the Corporations Act, as a liquidator, or controller of property, of a corporation that is authorised under a licence to perform an activity; or

2 Section 354 (Acting as commercial agent)

3 Chapter 12 (Accounts and funds)

(b) a person, appointed under this Act, as a receiver of an entity that is authorised under a licence to perform an activity.

(2) The person is exempt from the following provisions while performing a function for which the person is appointed in relation to a business carried on under a licence under this Act in accordance with the conditions applying to the director's licence for the corporation to which the appointment relates—

- chapter 4, part 1, part 2, division 1, section 114 and part 3
- chapter 5, part 1, division 1, part 2, division 1, section 133 and part 3
- chapter 6, part 1, division 1, part 2, division 1, section 173 and part 3
- chapter 7, part 1, division 1, part 2, division 1, section 210 and part 5
- chapter 9, part 1, division 1, part 2, division 1 and section 284
- section 326
- section 327
- section 328
- section 329
- chapter 10, part 1, division 1, part 2, division 1, section 344 and part 3.

6 Exemption—financial institutions and trustee companies

(1) Chapters 5, 6, 9 and 10[4] do not apply to a financial institution or trustee company.

(2) In this section—

trustee company means—

4 Chapters 5 (Real estate agents), 6 (Pastoral houses), 9 (Motor dealers) and 10 (Commercial agents)

(a) a trustee company under the *Trustee Companies Act 1968*; or

(b) the public trustee when the public trustee is—

(i) performing the activities that may be performed by a trustee company; or

(ii) exercising the powers that may be exercised by a trustee company; or

(iii) holding an office that may be held by a trustee company.

7 Exemption—pastoral houses

(1) A pastoral house is exempt from chapter 12[5] other than in relation to any sale of rural land or the auction of land that is not rural land.

(2) Subsection (1) applies subject to section 165(3).[6]

8 Exemption—livestock sales

(1) A del credere agent is exempt from chapter 12 in relation to a sale of livestock if, under a written agreement made before the sale or sales to which the agreement relates, the agent and the livestock's seller agree that the agent guarantees payment of the livestock's purchase price to the seller.[7]

(2) Subsection (1) applies to a del credere agent—

(a) only in relation to the sale or sales to which the agreement relates; and

(b) only while the agreement is in force.

9 Exemption—nonprofit corporations

(1) A nonprofit corporation is exempt from chapters 4 and 5[8] if—

5 Chapter 12 (Accounts and funds)

6 Section 165 (What a pastoral house licence authorises)

7 This practice is commonly known as 'del credere'.

8 Chapters 4 (Resident letting agents) and 5 (Real estate agents)

(a) the corporation provides or locates—

(i) affordable rental housing under an affordable housing scheme; or

(ii) approved supported accommodation; and

(b) the providing or locating of the housing or accommodation is funded or managed by the Commonwealth, the State or a local government.

(2) Subsection (1) does not apply if the nonprofit corporation is otherwise carrying on the business of a resident letting agent or real estate agent.

(3) To remove any doubt, it is declared that a corporation does not stop being a nonprofit corporation only because it receives a reward for providing its services to another nonprofit corporation.

(4) In this section—

affordable housing scheme see the *Residential Tenancies Act 1994*, schedule 3.

approved supported accommodation see the *Residential Tenancies Act 1994*, schedule 3.

nonprofit corporation means a corporation formed for a purpose other than the purpose of making a profit.

Part 2 Objects

10 Objects

(1) The main object of this Act is to provide a system for licensing and regulating persons as resident letting agents, real estate agents, pastoral houses, auctioneers, property developers, motor dealers and commercial agents, and for registering and regulating persons as registered employees, that achieves an appropriate balance between—

(a) the need to regulate for the protection of consumers; and

(b) the need to promote freedom of enterprise in the market place.

(2) Another significant object of this Act is to provide a way of protecting consumers against particular undesirable practices associated with the promotion of residential property.

(3) The objects are to be achieved mainly by—

(a) ensuring—

(i) only suitable persons with appropriate qualifications are licensed or registered; and

(ii) persons who carry on business or are in charge of a licensee's business at a place under the authority of a property agents and motor dealers licence maintain close personal supervision of the way the business is carried on; and

(b) providing—

(i) protection for consumers in their dealings with licensees and their employees; and

(ii) a legislative framework within which persons performing activities for licensees may lawfully operate; and

(c) regulating fees and commissions that can be charged for particular transactions; and

(d) providing protection for consumers in their dealings with marketeers; and

(e) promoting administrative efficiency by providing that—

(i) responsibility for licensing rests with the chief executive; and

(ii) responsibility for minor claims against the fund rests with the chief executive; and

(iii) responsibility for claims, other than minor claims, against the fund rests with the tribunal; and

(iv) responsibility for reviewing particular decisions of the chief executive rests with the tribunal; and

(v) responsibility for disciplinary matters rests with the tribunal; and

(f) establishing a claim fund to provide compensation in particular circumstances for persons who suffer financial loss because of their dealings with persons, other than property developers and their employees, regulated under this Act; and

(g) providing for the enforcement of matters involving marketeers by the tribunal and the District Court; and

(h) providing increased flexibility in enforcement measures through codes of conduct, injunctions, undertakings, and, for contraventions by marketeers, preservation of assets and civil penalties.

Part 3 Interpretation

11 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

12 Notes in text

A note in the text of this Act is part of the Act.

13 Meaning of *beneficial interest*

(1) For this Act, a licensee, other than a property developer, is taken to have a ***beneficial interest*** in property in each of the following cases—

Case 1

The purchase of the property is made for the licensee or an associate[9] of the licensee.

9 'Associate' is a term defined in the dictionary.

Case 2

An option to purchase the property is held by the licensee or an associate of the licensee.

Case 3

The purchase of the property is made for a corporation (having not more than 100 members) of which the licensee or an associate of the licensee is a member.

Case 4

An option to purchase the property is held by a corporation (having not more than 100 members) of which the licensee or an associate of the licensee is a member.

Case 5

The purchase of the property is made for a corporation of which the licensee or an associate of the licensee is an executive officer.

Case 6

An option to purchase the property is held by a corporation of which the licensee or an associate of the licensee is an executive officer.

Case 7

If the licensee is a corporation, the purchase of the property is made for an executive officer of the licensee or an associate of the executive officer.

Case 8

If the licensee is a corporation, an option to purchase the property is held by an executive officer of the licensee or an associate of the executive officer.

Case 9

The purchase of the property is made for a member of a firm or partnership of which the licensee or an associate of the licensee is also a member.

Case 10

The purchase of the property is made for a person carrying on a business for profit or gain and the licensee or an associate of

the licensee has, directly or indirectly, a right to participate in the income or profits of the person's business or the purchase of the property.

(2) For this Act, a registered employee of a licensee, other than a property developer, is taken to have a ***beneficial interest*** in property in each of the following cases—

Case 1

The purchase of the property is made for the registered employee or an associate[10] of the employee.

Case 2

The registered employee or an associate of the employee has an option to purchase the property.

Case 3

The purchase of the property is made for a corporation (having not more than 100 members) of which the registered employee or an associate of the employee is a member.

Case 4

An option to purchase the property is held by a corporation (having not more than 100 members) of which the registered employee or an associate of the employee is a member.

Case 5

The purchase of the property is made for a corporation of which the registered employee or an associate of the employee is an executive officer.

Case 6

An option to purchase the property is held by a corporation of which the registered employee or an associate of the employee is an executive officer.

Case 7

The purchase of the property is made for an executive officer of a corporation of which the registered employee or an associate of the registered employee is an executive officer.

10 'Associate' is a term defined in the dictionary.

Case 8

An option to purchase the property is held by an executive officer of a corporation of which the registered employee or an associate of the registered employee is an executive officer.

Case 9

The purchase of the property is made for a member of a firm or partnership of which the registered employee or an associate of the employee is also a member.

Case 10

The purchase of the property is made for a person carrying on a business for profit or gain and the registered employee or an associate of the employee has, directly or indirectly, a right to participate in the income or profits of the person's business or the purchase of the property.

14 Meaning of *in charge*

(1) A person is ***in charge*** of a licensee's business at a place where the licensee carries on business only if the person personally supervises, manages or controls the conduct of the licensee's business at the place.

(2) In this section—

licensee's business means the licensee's business carried on under the authority of the licensee's licence.

15 Meaning of *motor vehicle*

(1) ***Motor vehicle*** means a vehicle that moves on wheels and is propelled by a motor that forms part of the vehicle, whether or not the vehicle is capable of being operated or used in a normal way, and includes a caravan.

(2) ***Motor vehicle*** does not include—

(a) a hovercraft; or

(b) a vehicle designed for use exclusively in the mining industry; or

(c) a trailer, other than a caravan; or

(d) a tractor or farm machinery; or

(e) a vehicle designed for use exclusively on a railway or tramway.

16 Meaning of *open listing*

(1) An ***open listing*** is a written agreement entered into between a person (***seller***) and a real estate agent or pastoral house (***selling agent***) under which the seller appoints the selling agent, in accordance with the terms of the agreement, to sell stated property.

(2) Under the agreement—

(a) the seller retains a right—

(i) to sell the seller's property during the term of the agreement; or

(ii) to appoint additional real estate agents and pastoral houses as selling agents to sell the property on terms similar to those under the agreement; and

(b) the appointed selling agent is entitled to remuneration only if he or she is the effective cause of sale; and

(c) the appointment of the selling agent can be ended by either the seller or the selling agent at any time.

17 Meaning of *residential property*

(1) Property is ***residential property*** if the property is—

(a) a single parcel of land on which a place of residence is constructed or being constructed; or

(b) a single parcel of vacant land in a residential area.

(2) Without limiting subsection (1), property is ***residential property*** if the property is any of the following lots that is a place of residence or in a residential area—

(a) a lot included in a community titles scheme, or proposed to be included in a community titles scheme, under the *Body Corporate and Community Management Act 1997*;

(b) a lot or proposed lot under the *Building Units and Group Titles Act 1980*;

(c) a lot shown on a leasehold building units plan registered or to be registered under the *South Bank Corporation Act 1989*.

(3) Despite subsections (1) and (2), the following property is not ***residential property***—

(a) a single parcel of land on which a place of residence is constructed or being constructed if the property is used substantially for the purposes of industry, commerce or primary production;

(b) a single parcel of vacant land, if the property—

(i) is in a non-residential area; or

(ii) is in a residential area, but only if a local government has approved development in relation to the property, the development is other than for residential purposes and the approval is current; or

(iii) is used substantially for the purposes of industry, commerce or primary production.

(4) In this section—

development see the *Integrated Planning Act 1997*, section 1.3.2.

non-residential area means an area other than a residential area.

planning scheme see the *Integrated Planning Act 1997*, section 2.1.1.

residential area means an area identified on a map in a planning scheme as an area for residential purposes.

residential purposes includes rural residential purposes and future residential purposes.

vacant land means land on which there are no structural improvements, other than fencing.

18 Meaning of *unsolicited invitation*

(1) An ***unsolicited invitation*** to a person to attend a property information session includes an invitation—

(a) addressed personally to the person and sent to the person's residential, business, postal or email address; or

(b) made by telephoning the person, or by other personal approach to the person.

(2) An invitation to a person to attend a property information session is not an unsolicited invitation if it is—

(a) made at the person's request, other than in response to an approach of a kind mentioned in subsection (1)(b); or

(b) made to the public generally or a section of the public by media advertisement; or

(c) addressed nonspecifically and sent to the person's residential, business, postal or email address.

Examples of invitations addressed nonspecifically—

1 'The owner'

2 'The householder'.

19 Difference between *exclusive agency* and *sole agency*

(1) The only difference between an ***exclusive agency*** and a ***sole agency*** is the extent of the entitlement of a selling agent to receive an agreed commission or other reward on the sale of particular property.

(2) Under an ***exclusive agency***, a selling agent is entitled, on the sale of particular property and in accordance with the terms of an agreement with the seller of the property, to receive an agreed commission or other reward, whether or not the selling agent is the effective cause of the sale.

(3) However, if the sale were subject to a ***sole agency***, the selling agent would not be entitled to the commission or other reward if the seller were the effective cause of the sale.

Example—

Facts—S is the owner of a place of residence that S appoints R to sell. B buys the place of residence.

Assume for the example that in the following cases the following persons are the effective cause of the sale—

case 1—R

case 2—X (another real estate agent)

case 3—M (S's mother)

case 4—S.

If the selling agent is appointed under an exclusive agency, R is entitled to an agreed commission or other reward in accordance with the terms of R's agreement with S in cases 1, 2, 3 and 4. If the selling agent is appointed under a sole agency, R is entitled to an agreed commission or other reward in accordance with the terms of R's agreement with S only in cases 1, 2 and 3.

(4) In this section—

seller, of property, means the person authorising the sale of the property.

selling agent, of property, means a real estate agent, pastoral house or auctioneer appointed under a written agreement under this Act by the seller to sell the property.

Chapter 2 Licensing

Part 1 Categories of licence

20 Categories of licence

The chief executive may issue the following categories of property agents and motor dealers licence under this Act—

(a) property agents and motor dealers licence (resident letting agent);

(b) property agents and motor dealers licence (real estate agent);

(c) property agents and motor dealers licence (pastoral house);

(d) property agents and motor dealers licence (pastoral house director);

(e) property agents and motor dealers licence (pastoral house manager);

(f) property agents and motor dealers licence (pastoral house auctioneer);

(g) property agents and motor dealers licence (auctioneer);

(h) property agents and motor dealers licence (property developer);

(i) property agents and motor dealers licence (property developer director);

(j) property agents and motor dealers licence (motor dealer);

(k) property agents and motor dealers licence (commercial agent).

Part 2 How to obtain a licence

21 Steps involved in obtaining a licence

(1) A person who wishes to obtain a licence must be a suitable person to hold a licence under part 4.[11]

(2) The person must apply for the licence by—

(a) submitting an application showing, among other things, the person is eligible to obtain the licence; and

(b) paying the fees prescribed under a regulation; and

(c) giving the chief executive the other information required under section 23 and, if the person intends carrying on business under the licence, section 25.

11 Part 4 (Suitability of applicants and licensees)

(3) The chief executive decides the person's application after having regard, among other things, to—

(a) the person's suitability to hold a licence under this Act; and

(b) the person's eligibility to hold the licence.

Part 3 Applications for licence

22 Application for licence

(1) An applicant for a licence must—

(a) apply to the chief executive in the approved form; and

(b) state the category of licence being applied for; and

(c) state the term of the licence being applied for; and

(d) establish the applicant's eligibility for the category of licence being applied for; and

(e) state the names and addresses of the applicant's business associates; and

(f) provide any information the chief executive reasonably requires to decide whether the applicant is a suitable person to hold a licence.

(2) The application must be accompanied by—

(a) an application fee; and

(b) a licence issue fee; and

(c) for an applicant who is an individual, 2 recent colour photographs of the applicant of a size prescribed under a regulation and certified as photographs of the applicant in the way prescribed under a regulation.

(3) Subsection (2)(a) and (b) does not apply if the applicant is a corporation that holds another category of property agents and motor dealers licence.

23 Applicant must specify business address

(1) The applicant must also specify in the applicant's application—

(a) if the applicant intends carrying on business under the licence immediately after the issue of the licence—the place or places in Queensland where the applicant proposes to carry on business under the licence; or

(b) if the applicant does not intend carrying on business under the licence immediately after the issue of the licence—

(i) the capacity in which the person intends performing activities under the licence and the address where the activities are to be performed (***business address***); and

(ii) if the person intends to be a person in charge of a licensee's business at a place of business—the name of the person's employer and the address of the place of business where the person is to be in charge (also a ***business address***).

Examples of capacity in which activities may be performed—

- director of a licensed corporation
- licensed employee of a licensee.

Example of business address of an employed licensee—

- the address of the person's employer's place of business where the person generally reports for work.

(2) If the applicant intends to carry on business under the licence at more than 1 place, the applicant must specify in the application the place the applicant intends to be the applicant's principal place of business.

(3) A place of business or an address under this section must be a place where a document can be served personally.

Example—

A post office box is not a place the applicant may use as a place of business or an address for this Act.

24 Requirement to give information or material about application

(1) This section applies to an applicant for a licence.

(2) The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive information or material the chief executive reasonably considers is needed to consider the applicant's application for the licence within a stated reasonable time.

(3) The applicant is taken to have withdrawn the application if, within the stated reasonable time, the applicant fails to comply with the chief executive's requirement.

25 Applicant intending to carry on business to advise name of auditor

(1) If the applicant intends carrying on business under a licence and is required under this Act to keep a trust account, the applicant must—

(a) state in the applicant's application the name and business address of an auditor appointed by the applicant to audit the trust account;[12] and

(b) give the chief executive evidence that the auditor has accepted the appointment as auditor.

Note—

A property developer is not required to keep a trust account. See section 374.

(2) In this section—

auditor has the meaning given by section 391.[13]

12 See section 392 (Principal licensee must appoint auditor).

13 Section 391 (Definitions for pt 2)

Part 4 Suitability of applicants and licensees

26 Suitability of applicants and licensees—individuals

(1) An individual is not a suitable person to hold a licence if the person is—

(a) affected by bankruptcy action; or

(b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or

(c) currently disqualified from holding a licence or registration certificate; or

(d) a person the chief executive decides under section 28 is not a suitable person to hold a licence.

(2) An individual who is not a suitable person can not hold a licence.

27 Suitability of applicants and licensees—corporations

(1) A corporation is not a suitable person to hold a licence if an executive officer of the corporation is—

(a) affected by bankruptcy action; or

(b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or

(c) a person the chief executive decides under section 28 is not a suitable person to hold a licence.

(2) A corporation that is not a suitable person can not hold a licence.

28 Chief executive must consider suitability of applicants and licensees

(1) The chief executive must, when deciding whether a person is a suitable person to hold a licence, consider the following things—

(a) the character of the person;

(b) the character of the person's business associates;

(c) whether the person held a licence under this Act, the repealed Act or a corresponding law that was suspended or cancelled;

(d) whether an amount has been paid from the fund because the person did, or omitted to do, something that gave rise to the claim against the fund;

(e) whether the person has been disqualified under this Act, the repealed Act or a corresponding law from being a licensee or an executive officer of a corporation;

(f) whether, within the previous 5 years, the tribunal or the District Court has made an order under this Act against the person because of the person's involvement as a marketeer of residential property;

(g) for an individual—

(i) the person's criminal history; and

(ii) whether the person has been affected by bankruptcy action; and

(iii) whether the person has been convicted of an offence against this Act or the repealed Act or a corresponding law;

(iv) whether the person is capable of satisfactorily performing the activities of a licensee;

(v) whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act;[14]

14 See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers).

(h) for a corporation—

(i) whether the corporation has been placed in receivership or liquidation; and

(ii) whether an executive officer of the corporation has been affected by bankruptcy action; and

(iii) whether an executive officer of the corporation has been convicted of an offence against this Act or the repealed Act; and

(iv) whether each executive officer of the corporation is a suitable person to hold a licence;

(i) another thing the chief executive may consider under this Act.

(2) If the chief executive decides a person is not a suitable person to hold a licence, the chief executive must give the person an information notice within 14 days after the decision is made.

(3) In this section—

fund includes the auctioneers and agents fidelity guarantee fund under the repealed Act.

29 Public trustee is a suitable person

The corporation sole called The Public Trustee of Queensland is taken to be a suitable person to hold a licence.

30 Chief executive of department is a suitable person

The chief executive of a department of government is taken to be a suitable person to hold a licence.

31A Defence Housing Authority is a suitable person

The Defence Housing Authority is taken to be a suitable person to hold a licence.

32 Investigations about suitability of applicants and licensees

(1) The chief executive may make investigations about the following persons to help the chief executive decide whether an applicant or licensee is a suitable person to hold a licence—

(a) the applicant or licensee;

(b) if the applicant or licensee is a corporation—the corporation's executive officers;

(c) a business associate of the applicant or licensee.

(2) Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a written report about the criminal history of any of the persons.

(3) The commissioner must give the report to the chief executive.

(4) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.

33 Criminal history is confidential document

(1) A public service employee performing functions under this Act must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 32.

Maximum penalty—100 penalty units.

(2) However, the person does not contravene subsection (1) if—

(a) disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under or in relation to this Act; or

(b) the disclosure is otherwise required or permitted by law.

(3) The chief executive must destroy the report as soon as practicable after considering the person's suitability to hold a licence.

34 Requirement to give chief executive information or material about suitability

(1) This section applies to an applicant for the issue of a licence or the renewal or restoration of a licence.

(2) The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive information or material the chief executive reasonably considers is needed to establish the applicant's suitability for the licence within a stated reasonable time.

(3) The applicant is taken to have withdrawn the application if, within the stated reasonable time, the applicant fails to comply with the chief executive's requirement.

Part 5 Eligibility for licence

Division 1 Resident letting agent's licence

35 Eligibility for resident letting agent's licence

(1) An individual is eligible to obtain a resident letting agent's licence for a building complex only if the individual—

(a) is at least 18 years; and

(b) has the educational or other qualifications for a resident letting agent's licence that may be prescribed under a regulation; and

(c) satisfies the chief executive that the individual—

(i) has body corporate approval for the individual or the person by whom the individual is to be employed to carry on a business of letting lots in the building complex under the authority of a licence; and

(ii) resides, or will reside if issued with a licence, in the building complex or, if the individual proposes to perform the activities of a resident letting agent

for more than 1 building complex, in 1 of the building complexes; and

(iii) has a place, or will have a place if issued with a licence, in the building complex or, if the individual proposes to perform the activities of a resident letting agent for more than 1 building complex, in 1 of the building complexes, that will be the individual's registered office.

(2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—

(a) has a comparable qualification; or

(b) within 2 years before the day the individual's application for a resident letting agent's licence is received by the chief executive—

(i) has been licensed as a resident letting agent or real estate agent; or

(ii) has been the holder of a comparable licence under the repealed Act.

(3) A corporation is eligible to obtain a resident letting agent's licence for a building complex only if the corporation satisfies the chief executive that—

(a) the corporation has body corporate approval for the corporation to carry on a business of letting lots in the building complex under the authority of a licence; and

(b) a director of the corporation is a resident letting agent; and

(c) the individual who will perform the activities of a resident letting agent for the corporation—

(i) is a resident letting agent; and

(ii) resides, or will reside if the corporation is issued with a licence, in the building complex or, if the individual proposes to perform the activities of a resident letting agent for the corporation for more than 1 building complex, in 1 of the building complexes; and

(iii) has a place, or will have a place if issued with a licence, in the building complex or, if the individual proposes to perform the activities of a resident letting agent for the corporation for more than 1 building complex, that will be the individual's registered office.

(4) An individual who satisfies the chief executive that the individual will be a director of a corporation that is a resident letting agent is not required to comply with subsection (1)(c)(ii) if the individual does not intend performing the activities of a resident letting agent for the building complex.

Division 2 Real estate agent's licence

36 Eligibility for real estate agent's licence

(1) An individual is eligible to obtain a real estate agent's licence only if the individual—

(a) is at least 18 years; and

(b) has the educational or other qualifications for a real estate agent's licence that may be prescribed under a regulation.

(2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—

(a) has a comparable qualification; or

(b) within 2 years before the day the individual's application for a real estate agent's licence is received by the chief executive—

(i) has been licensed as a real estate agent; or

(ii) has been the holder of a comparable licence under the repealed Act.

(3) A corporation is eligible to obtain a real estate agent's licence only if the corporation satisfies the chief executive that a director of the corporation is a real estate agent.

Division 3 Pastoral house licences

37 Eligibility for pastoral house licence

A person is eligible to obtain a pastoral house licence only if the person is a corporation and—

(a) the corporation is—

(i) a corporation within the meaning of the Corporations Act;[15] and

(ii) the subject of an order under the *Banking Act 1959* (Cwlth), section 11[16] to the effect that the provisions of that Act, other than section 63, do not apply to it; and

(iii) a registered corporation under the *Financial Sector (Collection of Data) Act 2001* (Cwlth) included in the category for pastoral finance companies under that Act; and

(b) the corporation satisfies the chief executive that a director of the corporation is a pastoral house director.

38 Eligibility for pastoral house director's licence

(1) A person is eligible to obtain a pastoral house director's licence only if the person—

(a) is an individual and at least 18 years; and

(b) has the educational or other qualifications for a pastoral house director's licence that may be prescribed under a regulation; and

(c) has been employed by a pastoral house for at least the period prescribed under a regulation; and

15 See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers).

16 *Banking Act 1959* (Cwlth), section 11 (APRA may determine that provisions of this Act do not apply)

(d) is, or satisfies the chief executive that the person, on the issue of the licence, will be, a director of the pastoral house stated in the person's application for licence.

(2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual has a comparable qualification.

39 Eligibility for pastoral house manager's licence

(1) A person is eligible to obtain a pastoral house manager's licence only if the person—

(a) is an individual and at least 18 years; and

(b) has the educational or other qualifications for a pastoral house manager's licence that may be prescribed under a regulation; and

(c) has been employed by a pastoral house for at least the period prescribed under a regulation.

(2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual has a comparable qualification.

40 Eligibility for pastoral house auctioneer's licence

(1) A person is eligible to obtain a pastoral house auctioneer's licence only if the person—

(a) is an individual and at least 18 years; and

(b) has the educational or other qualifications for a pastoral house auctioneer's licence that may be prescribed under a regulation; and

(c) has been employed by a pastoral house for at least the period prescribed under a regulation.

(2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual has a comparable qualification.

Division 4 Auctioneer's licences

41 Eligibility for auctioneer's licence

(1) An individual is eligible to obtain an auctioneer's licence only if the individual—

(a) is at least 18 years; and

(b) has the educational or other qualifications for an auctioneer's licence that may be prescribed under a regulation.

(2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—

(a) has a comparable qualification; or

(b) within 2 years before the day the individual's application for an auctioneer's licence is received by the chief executive—

(i) has been licensed as an auctioneer; or

(ii) has been the holder of a comparable licence under the repealed Act.

(3) A corporation is eligible to obtain an auctioneer's licence only if the corporation satisfies the chief executive that a director of the corporation is an auctioneer.

Division 5 Property developer's licence

42 Eligibility for property developer's licence

(1) An individual is eligible to obtain a property developer's licence only if the individual is at least 18 years.

(2) A corporation is eligible to obtain a property developer's licence only if the corporation satisfies the chief executive that a director of the corporation is, or on the issue of the licence will be, a property developer director.

43 Eligibility for property developer director's licence

A person is eligible to obtain a property developer director's licence only if the person—

(a) is an individual and at least 18 years; and

(b) is, or satisfies the chief executive that the person, on the issue of the licence, will be, a director of the property developer stated in the person's application for licence.

Division 6 Motor dealer's licence

44 Eligibility for motor dealer's licence

(1) An individual is eligible to obtain a motor dealer's licence only if—

(a) the individual—

(i) is at least 18 years; and

(ii) has the educational or other qualifications for a motor dealer's licence that may be prescribed under a regulation; and

(b) the individual satisfies the chief executive that the use, for the purpose of dealing in motor vehicles, of the place at which the individual proposes to carry on business as a motor dealer is authorised under the *Integrated Planning Act 1997*.

(2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(a)(ii) if the chief executive is satisfied the individual—

(a) has a comparable qualification; or

(b) within 2 years before the day the individual's application for a motor dealer's licence is received by the chief executive—

(i) has been licensed as a motor dealer; or

(ii) has been the holder of a comparable licence under the repealed Act.

(3) A corporation is eligible to obtain a motor dealer's licence only if the corporation satisfies the chief executive that—

(a) a director of the corporation is a motor dealer; and

(b) the use, for the purpose of dealing in motor vehicles, of the place at which the corporation proposes to carry on business as a motor dealer is authorised under the *Integrated Planning Act 1997*.

Division 7 Commercial agent's licence

45 Eligibility for commercial agent's licence

(1) An individual is eligible to obtain a commercial agent's licence only if the individual—

(a) is at least 18 years; and

(b) has the educational or other qualifications for an commercial agent's licence that may be prescribed under a regulation.

(2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—

(a) has a comparable qualification; or

(b) within 2 years before the day the individual's application for a commercial agent's licence is received by the chief executive—

(i) has been licensed as a commercial agent; or

(ii) has been the holder of a comparable licence under the repealed Act.

(3) A corporation is eligible to obtain a commercial agent's licence only if the corporation satisfies the chief executive that a director of the corporation is a commercial agent.

Division 8 Chief executives and corporations sole

46 Public trustee is eligible to obtain particular licences

The public trustee as a corporation sole is taken to be eligible to obtain the following licences—

(a) resident letting agent's licence;

(b) real estate agent's licence;

(c) auctioneer's licence;

(d) property developer's licence;

(e) motor dealer's licence;

(f) commercial agent's licence.

47 Chief executive of department is eligible to obtain particular licences

The chief executive of a department is taken to be eligible to obtain the following licences—

(a) resident letting agent's licence;

(b) real estate agent's licence;

(c) auctioneer's licence;

(d) property developer's licence;

(e) motor dealer's licence;

(f) commercial agent's licence.

48A Defence Housing Authority is eligible to obtain particular licences

The Defence Housing Authority is taken to be eligible to obtain the following licences—

(a) resident letting agent's licence;

(b) real estate agent's licence;

(c) auctioneer's licence;

(d) property developer's licence.

Part 6 Issue of licences

49 Chief executive may issue or refuse to issue licence

(1) The chief executive may issue or refuse to issue a licence to an applicant.

(2) The chief executive may issue a licence to an applicant only if the chief executive is satisfied that—

(a) the applicant is a suitable person and—

(i) if the applicant intends carrying on business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant intends carrying on business in conjunction is a suitable person; and

(ii) if the applicant is a corporation—each executive officer of the corporation is a suitable person; and

(b) the applicant is eligible to obtain a licence of the category of licence being applied for; and

(c) the application is properly made.

(3) For subsection (2)(c), an application is properly made only if it complies with section 22[17] and is accompanied by the things mentioned in that section.

(4) If the chief executive decides to refuse to issue the licence, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.

(5) If the applicant's application for a licence is refused, the applicant may not file another application for a licence—

17 Section 22 (Application for licence)

(a) for 3 months after the day the chief executive gives the applicant the information notice under subsection (4); or

(b) if the applicant applies to the tribunal to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed.

(6) Subsection (5) does not apply if—

(a) the applicant is a corporation; and

(b) the applicant satisfies the chief executive that, because of a genuine sale—

(i) no person who was a shareholder of, or held a beneficial interest in, the corporation when the refused application was made is a shareholder of, or holds a beneficial interest in, the applicant corporation; and

(ii) no person who was in a position to control or influence the affairs of the corporation when the refused application was made is in a position to control or influence the affairs of the applicant corporation.

Note—

Section 13 (Meaning of *beneficial interest*) does not define *beneficial interest* for this paragraph (b)(i).

50 Licence—public trustee

(1) The chief executive may issue a licence to the public trustee in the public trustee's capacity as a corporation sole in the name 'The Public Trustee of Queensland'.

(2) A licence issued to the public trustee authorises an officer or employee of the public trustee to perform any activity authorised by the public trustee that the public trustee may perform under the licence.

(3) To remove any doubt, it is declared that an officer or employee performing an activity authorised by the public trustee is not required to be licensed or registered under this Act to perform the activity.

51 Licence—chief executive of department

(1) The chief executive may issue a licence to the chief executive of a department in the name 'The Chief Executive of the (name of department)'.

(2) The licence is taken to be issued to the chief executive for the time being of the department.

(3) The chief executive of a department, as licensee, is taken to represent the State.

(4) A licence issued to the chief executive authorises an officer or employee of the department of which the chief executive is chief executive to perform any activity authorised by the chief executive that the chief executive may perform under the licence.

(5) To remove any doubt, it is declared that an officer or employee performing an activity authorised by the chief executive is not required to be licensed or registered under this Act to perform the activity.

52A Licence—Defence Housing Authority

(1) The chief executive may issue a licence to the Defence Housing Authority in the name 'Defence Housing Authority'.

(2) A licence issued to the Defence Housing Authority authorises an officer or employee of the authority to perform any activity authorised by the authority that the authority may perform under the licence.

(3) To remove any doubt, it is declared that an officer or employee performing an activity authorised by the authority is not required to be licensed or registered under this Act to perform the activity.

53 Licence—conditions

(1) The chief executive may issue a licence on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence.

(2) Without limiting subsection (1), a condition may—

(a) limit or prohibit the performance of an activity authorised under this Act; or

(b) require a licensee to hold insurance of a kind and in an amount prescribed under a regulation.

(3) If the chief executive decides to issue a licence on condition, the chief executive must give the applicant an information notice within 14 days after the decision is made.

Part 7 Restrictions on performing activities under licences

54 Restriction—corporations

(1) A corporation that holds a licence may perform an activity under its licence only if the activity may be performed by—

(a) a licensed director of the corporation under the director's licence; or

(b) a liquidator or controller appointed under the Corporations Act of property of the corporation; or

(c) a receiver appointed under this Act of property of the corporation.

Example—

D is the only licensed director of Company Pty Ltd, a licensed motor dealer. D holds a motor dealer's licence that is subject to a condition that D deal only in motorcycles. Because of the condition, Company Pty Ltd is only authorised to deal in motorcycles under its licence.

However, if L becomes another licensed director of Company Pty Ltd and L is authorised under L's licence to deal in caravans, Company Pty Ltd may also deal in caravans.

(2) However, subsection (1) does not prevent a corporation that holds a real estate agent's, pastoral house, or motor dealer's licence selling or attempting to sell or offering for sale or resale any property by way of auction if the auction is conducted by an auctioneer who is an employed licensee of the corporation.

(3) If the corporation performs an activity it is not authorised to perform, it is taken to be a person who acts as a licensee without a licence for the performance of the activity.

55 Restriction—individuals

(1) An individual who is an employed licensee may perform an activity authorised under the individual's licence only if the activity may also be performed by the individual's employer under the employer's licence.

Example—

E is a licensed employee of P, a licensed motor dealer. E's licence is not subject to condition. However, P's licence is subject to a condition that P deal only in motorcycles. Because of the condition, E is only authorised to deal in motorcycles under E's licence during E's employment with P and while P is subject to the condition.

(2) However, subsection (1) does not prevent an individual who holds an auctioneer's licence selling or attempting to sell or offering for sale or resale any property by way of auction for the individual's licensed employer.

(3) If the employed licensee performs an activity the employed licensee is not authorised to perform because of subsection (1), the employed licensee is taken to be a person who acts as a licensee without a licence for the performance of the activity.

56 Restriction—conditions

(1) This section applies to a licensee who performs an activity under the licensee's licence that the licensee is not authorised to perform because of a condition on the licensee's licence.

(2) The licensee is taken to be a person who acts as a licensee without a licence for the performance of the activity.

Part 8 Renewal and restoration of licences

Division 1 Renewal

57 Application for renewal

(1) A licensee must apply for renewal of the licensee's licence before the licence expires.

(2) The application must—

(a) be made to the chief executive in the approved form; and

(b) state the term of the licence being applied for; and

(c) state the names and addresses of the licensee's business associates; and

(d) be accompanied by—

(i) an application fee; and

(ii) a licence renewal fee; and

(iii) if the licensee is required as a condition of the licensee's licence to hold insurance, proof of the currency of the insurance.

(3) The application must also be accompanied by—

(a) an audit report for all trust accounts kept by the licensee during the relevant audit period; or

(b) a statutory declaration that the licensee did not operate a trust account during the relevant audit period.

(4) Subsection (3) does not apply to a property developer.

(4A) If requested by the chief executive, the application must, for a licensee who is an individual, also be accompanied by 2 recent colour photographs of the licensee that are—

(a) of a size prescribed under a regulation; and

(b) certified as photographs of the licensee in the way prescribed under a regulation.

(5) The licensee must also satisfy the chief executive that the licensee has actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation.

(6) In this section—

audit period has the meaning given by section 400.[18]

audit report has the meaning given by section 400.

relevant audit period, for a licensee's licence, means the audit period ending immediately before the licence's expiry date.

58 Chief executive may renew or refuse to renew licence

(1) The chief executive must consider the renewal application and may renew or refuse to renew the licence.

(2) The chief executive may renew the licence only if the chief executive is satisfied—

(a) the licensee is a suitable person and—

(i) if the licensee carries on business in partnership or in conjunction with others—each member of the partnership or each person with whom the licensee carries on business in conjunction is a suitable person; and

(ii) if the licensee is a corporation—each executive officer of the corporation is a suitable person; and

(b) the application is properly made; and

(c) the licensee has, as a principal licensee, licensed director or employed licensee, actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation; and

(d) the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.

18 Section 400 (Definitions for div 3)

(3) For subsection (2)(b), an application is properly made only if it complies with section 57[19] and is accompanied by the things mentioned in that section.

(4) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice within 14 days after the decision is made.

59 Licence taken to be in force while application for renewal is considered

If an application is made under section 57, the licensee's licence is taken to continue in force from the day that it would, apart from this section, have expired until the licensee's application for renewal is—

(a) decided under section 58; or

(b) withdrawn by the licensee; or

(c) taken to have been withdrawn under section 34(3).[20]

Division 2 Restoration

60 Application for restoration

(1) If a licensee's licence expires, the licensee may apply for restoration of the licence.

(2) The application must—

(a) be made within 3 months after the expiry; and

(b) be made to the chief executive in the approved form; and

(c) state the term of the licence being applied for; and

(d) state the names and addresses of the licensee's business associates; and

(e) be accompanied by—

19 Section 57 (Application for renewal)

20 Section 34 (Requirement to give chief executive information or material about suitability)

(i) an application fee; and

(ii) a licence renewal fee; and

(iii) a licence restoration fee; and

(iv) if the licensee is required as a condition of the licensee's licence to hold insurance, proof of the currency of the insurance.

(3) The application must also be accompanied by—

(a) an audit report about all trust accounts maintained by the licensee during the relevant audit period; or

(b) a statutory declaration that the licensee did not operate a trust account during the relevant audit period.

(4) Subsection (3) does not apply to a property developer.

(4A) If requested by the chief executive, the application must, for a licensee who is an individual, also be accompanied by 2 recent colour photographs of the licensee that are—

(a) of a size prescribed under a regulation; and

(b) certified as photographs of the licensee in the way prescribed under a regulation.

(5) The licensee must also satisfy the chief executive that the licensee has, as a licensee or salesperson, actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation.

(6) In this section—

audit period has the meaning given by section 400.[21]

audit report has the meaning given by section 400.

relevant audit period, for a licensee's licence, means the audit period ending immediately before the licence's expiry date.

61 Chief executive may restore or refuse to restore licence

(1) The chief executive must consider the restoration application and may restore or refuse to restore the licence.

21 Section 400 (Definitions for div 3)

(2) The chief executive may restore the licence only if the chief executive is satisfied—

(a) the licensee is a suitable person and—

(i) if the licensee carries on, or intends to carry on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the licensee carries on business in conjunction is a suitable person; and

(ii) if the licensee is a corporation—each executive officer of the corporation is a suitable person; and

(b) the application is properly made; and

(c) the licensee has, as a principal licensee or employed licensee, actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation; and

(d) the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.

(3) For subsection (2)(b), an application is properly made only if it complies with section 60 and is accompanied by the things mentioned in that section.

(4) If the chief executive decides to refuse the application, the chief executive must give the licensee an information notice within 14 days after the decision is made.

(5) If the chief executive restores the licence—

(a) the licence is taken to have been renewed on the day it would, apart from section 62, have expired (the ***initial expiry date***); and

(b) to remove any doubt, a thing done during the period starting on the initial expiry date and ending on the day the licence is restored under this section is taken to have been as validly done as it would have been if the licence had been renewed immediately before the initial expiry date.

62 Licence taken to be in force while application for restoration is considered

If an application is made under section 60,[22] the licensee's licence is taken to continue in force from the day that it would, apart from this section, have expired until the licensee's application for restoration is—

(a) decided under section 61; or

(b) withdrawn by the licensee; or

(c) taken to have been withdrawn under section 34(3).[23]

Part 9 Dealings with licences

Division 1 Transfer of licence

63 Transfer of licence prohibited

A licence may not be transferred.

Division 2 Substitute licences

64 Appointment of substitute licensee—principal licensee—individual

(1) A principal licensee may appoint an adult as the licensee's substitute licensee for a period of not more than 30 days only if—

(a) the licensee will be absent from the licensee's registered office for the period; and

(b) the adult consents to the appointment; and

22 Section 60 (Application for restoration)

23 Section 34 (Requirement to give chief executive information or material about suitability)

(c) if the licensee is required as a condition of the licensee's licence to hold insurance, the adult is covered by the insurance or holds insurance that complies with the requirements of the condition.

(2) The principal licensee must ensure—

(a) an appointment under subsection (1) and the substitute licensee's consent to the appointment are in writing and state the period of appointment; and

(b) the appointment, consent and evidence of any insurance the substitute licensee is required to have are—

(i) kept at the licensee's registered office; and

(ii) made available for immediate inspection by an inspector who asks to see them.

Maximum penalty—100 penalty units.

(3) A principal licensee who will be absent from the licensee's registered office for a period of more than 30 days must apply to the chief executive in the approved form for the appointment or the extension of the appointment of an adult (***nominated person***) as the licensee's substitute licensee.

Maximum penalty—200 penalty units.

(4) If the principal licensee is a person for whom an administrator has been appointed under the *Guardianship and Administration Act 2000* or is deceased, the licensee's representative may make the application under subsection (3).

(5) The application must be accompanied by—

(a) the nominated person's signed consent to the appointment; and

(b) enough information about the nominated person to enable the chief executive to decide whether the person—

(i) is a suitable person to hold a licence; and

(ii) is sufficiently qualified to perform the licensee's activities during the period; and

(iii) if the licensee is required as a condition of the licensee's licence to hold insurance, is covered by

the insurance or holds insurance that complies with the requirements of the condition; and

(c) the fee prescribed under a regulation.

(6) In this section—

principal licensee means a principal licensee who is an individual.

representative, of a principal licensee, means—

(a) for a licensee for whom an administrator has been appointed under the *Guardianship and Administration Act 2000*—the licensee's administrator;

(b) for a deceased licensee—the licensee's personal representative.

65 Appointment of substitute licensee—employed licensee in charge of a licensee's business at a place

(1) This section applies if an employed licensee who is in charge of a licensee's business at a place will be absent from the place for any reason, other than the employed licensee's resignation or termination of employment.

(2) If the employed licensee will be absent from the place for a period of not more than 30 days, the principal licensee who employs the employed licensee may appoint an adult as the employed licensee's substitute licensee for the period if the adult consents to the appointment.

(3) The principal licensee must ensure an appointment under subsection (2) and the person's consent to the appointment are—

(a) in writing and state the period of appointment; and

(b) kept at the licensee's registered office; and

(c) made available for immediate inspection by an inspector who asks to see them.

Maximum penalty—100 penalty units.

(4) If the employed licensee will be absent from the place for a period of more than 30 days, the principal licensee who employs the employed licensee must apply to the chief

executive in the approved form for the appointment or the extension of the appointment of a person (***nominated person***) as the licensee's substitute licensee.

Maximum penalty—200 penalty units.

(5) The application must be accompanied by—

(a) the nominated person's signed consent to the appointment; and

(b) enough information about the nominated person to enable the chief executive to decide whether the person is—

(i) a suitable person to hold a licence; and

(ii) sufficiently qualified to perform the employed licensee's activities during the period; and

(c) the fee prescribed under a regulation.

(6) In this section—

principal licensee includes—

(a) for a licensee for whom an administrator has been appointed under the *Guardianship and Administration Act 2000*—the licensee's administrator; and

(b) for a deceased licensee—the licensee's personal representative.

66 Appointment of substitute licensee—pastoral house manager in charge of a licensee's business at a place

(1) This section applies if a pastoral house manager who is in charge of a pastoral house's business at a place will be absent from the place for any reason, other than the manager's resignation or termination of employment.

(2) If the pastoral house manager is absent from the place for a period of not more than 30 days, the pastoral house that employs the manager may appoint an adult as the manager's substitute licensee for the period if the adult consents to the appointment.

(3) The pastoral house must ensure an appointment under subsection (2) and the person's consent to the appointment are—

(a) in writing and state the period of appointment; and

(b) kept at the pastoral house's registered office; and

(c) made available for immediate inspection by an inspector who asks to see them.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[24]—100 penalty units; or

(b) for a pastoral house—500 penalty units.

(4) If the pastoral house manager will be absent from the place for a period of more than 30 days, the pastoral house that employs the manager must apply to the chief executive in the approved form for the appointment or the extension of the appointment of a person (***nominated person***) as the manager's substitute licensee.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—100 penalty units; or

(b) for a pastoral house—500 penalty units.

(5) The application must be accompanied by—

(a) the nominated person's signed consent to the appointment; and

(b) enough information about the nominated person to enable the chief executive to decide whether the person is—

(i) a suitable person to hold a licence; and

(ii) sufficiently qualified to perform the manager's

24 Section 591 (Executive officers must ensure corporation complies with Act)

activities during the period; and

(c) the fee prescribed under a regulation.

67 Chief executive may appoint or refuse to appoint substitute licensee

(1) The chief executive may appoint or refuse to appoint a nominated person mentioned in section 64(3), 65(4) or 66(4) as a licensee's substitute licensee.

(2) The chief executive may appoint the nominated person only if the chief executive is satisfied that the person—

(a) is a suitable person to hold a licence; and

(b) is sufficiently qualified to perform the licensee's activities during the period of the licensee's absence; and

(c) if the licensee is required as a condition of the licensee's licence to hold insurance, is covered by the insurance or holds insurance that complies with the requirements of the condition.

(3) An appointment under this section may be made subject to the conditions the chief executive considers appropriate.

(4) The chief executive must give written notice of the appointment to the licensee and the substitute licensee.

(5) If the chief executive decides to refuse the application or to impose conditions on the appointment, the chief executive must give the licensee an information notice within 14 days after the decision is made.

68 Substitute licensee

(1) On appointment, a substitute licensee—

(a) must act as substitute for the licensee for whom the substitute is appointed; and

(b) is taken to be the licensee during the period of appointment.

(2) A licensee for whom a substitute has been appointed must not act under the authority of the licensee's licence while the appointment of the substitute licensee continues.

Maximum penalty—200 penalty units.

(3) The appointment of the substitute licensee ends if—

(a) the period of appointment ends; or

(b) the principal licensee gives written notice to end the appointment from a date stated in the notice—

(i) for a substitute licensee appointed under section 64(1), 65(2) or 66(2)—to the substitute licensee; or

(ii) for a substitute licensee appointed under section 67—to the chief executive and the substitute licensee; or

(c) the substitute licensee gives written notice to end the appointment from a date stated in the notice—

(i) for a substitute licensee appointed under section 64(1), 65(2) or 66(2)—to the principal licensee making the appointment; or

(ii) for a substitute licensee appointed under section 67—to the chief executive and the principal licensee who applied for the appointment; or

(d) the chief executive revokes the substitute licensee's appointment; or

(e) the licensee's licence is suspended or cancelled; or

(f) if the licensee is a principal licensee, the licensee stops carrying on business as a licensee.

69 Limitation on period of substitution

(1) A principal licensee may not appoint a substitute licensee for himself or herself for more than 12 weeks in any period of 12 months.

(2) A principal licensee may not appoint a substitute licensee for an employed licensee for more than 12 weeks in any period of 12 months.

(3) A pastoral house may not appoint a substitute licensee for a pastoral house manager for more than 12 weeks in any period of 12 months.

(4) The chief executive may not appoint a substitute licensee for any licensee for more than 26 weeks in any period of 12 months.

Division 3 General

70 Amendment of licence conditions

(1) The chief executive may amend the conditions of a licence—

(a) on the licensee's application; or

(b) on the order of the tribunal after a disciplinary hearing; or

(c) on the chief executive's own initiative.

Note—

The tribunal may deal with the conditions of a person's licence under section 529 (Orders tribunal may make on disciplinary charge hearing).

(2) An application under subsection (1)(a) must be made in the approved form and be accompanied by the application fee prescribed under a regulation.

(3) Before making an amendment under subsection (1)(a), the chief executive must be satisfied the licensee meets the eligibility requirements the chief executive specifies as relevant to the amendment of the condition.

(4) Before making an amendment under subsection (1)(c), the chief executive must—

(a) give written notice to the licensee—

(i) of the particulars of the proposed amendment; and

(ii) that the licensee may make written submissions to the chief executive about the proposed amendment before a stated day, not later than 14 days after the notice is given to the licensee; and

(b) have regard to submissions made to the chief executive by the licensee before the stated day.

(5) Subsection (4) does not apply if the chief executive decides that the amendment must be made urgently—

(a) to avoid potential claims against the fund; or

(b) to ensure compliance with this Act.

(6) If the chief executive decides to amend the conditions of a licence under subsection (1)(c), the chief executive must give written notice of the amendment to the licensee and an information notice within 14 days after the decision is made.

(7) The amendment takes effect—

(a) on the day the written notice of the amendment is given to the licensee; or

(b) if a later day is stated in the notice, the stated day.

(8) If the chief executive decides to refuse to make an amendment requested under subsection (1)(a), the chief executive must give the applicant an information notice within 14 days after the decision is made.

71 Return of licence for amendment of conditions or when suspended or cancelled

(1) If the chief executive amends the conditions of a licence under section 70, the chief executive may ask the licensee to produce the licence for amendment within a stated period of not less than 14 days.

(2) The licensee must comply with a request under subsection (1), unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(3) A person whose licence has been suspended or cancelled must return the licence to the chief executive within 14 days after the suspension or cancellation, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

72 Surrender of licence

(1) A licensee may surrender the licensee's licence by giving written notice to the chief executive and returning the licence.

(2) A licence surrendered under this section stops having effect on the day it is surrendered.

73 Licence may be deactivated

(1) A licensee may ask the chief executive to deactivate the licensee's licence.

(2) A request under subsection (1) must be made in the approved form and be accompanied by the licensee's licence and the fee prescribed under a regulation.

(3) The licence is taken to be deactivated when the request, the licence and the prescribed fee are received by the chief executive under subsection (2).

(4) A licence that is deactivated does not authorise the licensee to perform an activity under the authority of the licence.

(5) The deactivation of a licence under this section does not—

(a) affect the term of the licence; or

(b) entitle the licensee to a refund of fees in relation to the licence for the balance of the licence's term.

(6) The holder of a deactivated licence may apply to have the licence renewed under section 57[25] or restored under section 60[26] as a deactivated licence at a reduced fee prescribed under a regulation.

(7) A licensee may ask the chief executive to reactivate the licence.

(8) However, if the licence has been deactivated for 5 years or more, the licence may be reactivated only if the licensee satisfies any educational or other requirements prescribed under a regulation for the issue of the licence.

25 Section 57 (Application for renewal)

26 Section 60 (Application for restoration)

(9) A request under subsection (7) must be made in the approved form and be accompanied by the fee prescribed under a regulation.

Part 10 Immediate suspension and cancellation of licences

74 Immediate suspension

(1) This section applies if—

(a) the chief executive considers, on reasonable grounds, that an irregularity or deficiency exists in a licensee's trust account; or

(b) the chief executive is satisfied a licensee who has been convicted of failing to file an audit report as required under section 402 continues, after the end of any appeal against the conviction, to fail to file the audit report; or

(c) a receiver is appointed under section 417[27] over property—

(i) held by a licensee; or

(ii) held by another person for a licensee; or

(iii) recoverable by a licensee; or

(d) the chief executive considers, on reasonable grounds, that a licensee—

(i) has contravened or is contravening this Act; or

(ii) is likely or proposing to engage in conduct that would contravene this Act.

(2) The chief executive may, whether or not disciplinary proceedings have been started under this Act—

(a) suspend the licensee's licence; or

27 Section 417 (When receiver may be appointed)

(b) without limiting paragraph (a), for subsection (1)(a), suspend a licence held by an employee of the licensee if the chief executive considers, on reasonable grounds, the employee is responsible in any way for the irregularity or deficiency in the licensee's trust account.

(3) If the chief executive suspends a licence for a reason mentioned in subsection (1)(a), (c) or (d), the licence may be suspended for the period, of not more than 28 days, and on the conditions, the chief executive decides.

(4) If the chief executive suspends the licence for the reason mentioned in subsection (1)(b), the licence is suspended until whichever of the following happens first—

(a) the licensee files the required audit report;

(b) an application to the tribunal for the cancellation of the licence is heard and decided.

(5) The chief executive must give the licensee an information notice in relation to the suspension within 14 days after suspending the licensee's licence.

(6) The licensee must return the licence to the chief executive within 14 days after the licensee receives the notice, unless the person has a reasonable excuse.

Maximum penalty for subsection (6)—100 penalty units.

75 Immediate cancellation

(1) A licensee's licence is cancelled on the happening of any of the following events—

(a) the licensee is convicted of a serious offence;

(b) if the licensee is an individual, the licensee is affected by bankruptcy action;

(c) if the licensee is a corporation, the licensee has been wound up or struck off under the Corporations Act.

(2) The licensee must return the licence to the chief executive within 14 days after the happening of an event mentioned in subsection (1), unless the licensee has a reasonable excuse.

Maximum penalty for subsection (2)—100 penalty units.

Part 11 General provisions about licences

76 Form of licence

(1) A licence must be issued in the approved form.

(2) However, the chief executive may approve—

(a) a form of licence for office display purposes; and

(b) a form of licence for personal identification purposes.

Examples—

1 A form of licence for office display purposes may be in the form of a certificate that may be framed and displayed in an office.

2 A form of licence for personal identification purposes may be in the form of a small photo identification card suitable for carrying easily on one's person.

(3) The chief executive may also issue a form of licence for a corporation endorsed with the categories of property agents and motor dealers licence issued in the corporation's name.

(4) The licence must contain the following particulars—

(a) the name of the licensee;

(b) the date of issue of the licence;

(c) the expiry date of the licence;

(d) for a personal identification licence, a recent photograph of the licensee;

(e) other particulars that may be prescribed under a regulation.

77 Display of licence

A principal licensee must display the licensee's licence at the licensee's registered office in the way prescribed under a regulation.

Maximum penalty—100 penalty units.

78 Term of licence

A licence may be issued for a 1 year or 3 year term.

79 Replacement licences

(1) A licensee may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged licence.

(2) The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.

(3) The chief executive must grant the application if the chief executive is satisfied the licence has been lost, stolen or destroyed, or damaged in a way to require its replacement.

(4) If the chief executive grants the application, the chief executive must issue another licence to the applicant to replace the lost, stolen, destroyed or damaged licence.

80 Register of licences

(1) The chief executive must keep a register of licences and applications for licences (***licence register***).

(2) The licence register must contain the following particulars—

(a) for each applicant for a licence—

(i) the applicant's name; and

(ii) if the applicant intends to carry on business under the licence, the place where the applicant intends to carry on business; and

(iii) the category of licence applied for; and

(iv) the date of the application; and

(v) the application number;

(b) for each licensee—

(i) the licensee's name; and

(ii) the licensee's registered office; and

(iii) the category of the licensee's licence; and

(iv) the dates of issue and expiry of the licensee's current licence; and

(v) any conditions imposed on the licence; and

(vi) if the licensee is a corporation, the name of the individual in charge of the licensee's business at the licensee's registered office; and

(vii) if the licensee is a director of a licensed corporation, the name of the licensed corporation; and

(viii) if the licensee is an employee of another licensee, the name of the licensee's employer; and

(ix) the licensee's licence number; and

(x) particulars of any surrender, suspension, cancellation or revocation of the licensee's licence.

(3) A person may, on payment of any fee that may be prescribed under a regulation, inspect, or get a copy of details in, the part of the register containing the particulars mentioned in subsection (2)—

(a) at a place or places decided by the chief executive; or

(b) by using a computer.

(4) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.

(5) The register may be kept in any way the chief executive considers appropriate.

(6) In this section—

contain includes record and store.

81 Licensees to notify chief executive of changes in circumstances

(1) A licensee must give written notice to the chief executive of a prescribed change in the licensee's circumstances within 14 days after the change.

Maximum penalty—100 penalty units.

(2) In this section—

prescribed change means a change prescribed under a regulation.

Chapter 3 Employee registration

Part 1 Categories of registered employees

82 Categories of registered employees

The following categories of registered employees are prescribed for this Act—

(a) real estate salesperson;

(b) pastoral house salesperson;

(c) trainee auctioneer;

(d) property developer salesperson;

(e) motor salesperson;

(f) commercial subagent.

Part 2 How to obtain registration

83 Steps involved in obtaining registration

(1) A person who wishes to obtain registration as a registered employee must be a suitable person to hold registration under part 4.[28]

(2) The person must apply for registration by—

28 Part 4 (Suitability of applicants)

(a) submitting an application showing, among other things, the person is eligible to obtain registration; and

(b) paying the prescribed fees.

(3) The chief executive decides the person's application after having regard, among other things, to—

(a) the person's suitability to hold a registration certificate under this Act; and

(b) the person's eligibility to hold the registration certificate.

Part 3 Applications for registration

84 Application for registration

(1) An applicant for registration must—

(a) be an individual; and

(b) apply to the chief executive in the approved form; and

(c) state the category of employee registration being applied for; and

(d) state the term of the registration being applied for; and

(e) state the name and business address of the licensee by whom the applicant is to be employed; and

(f) establish the applicant's suitability and eligibility for the category of employee registration being applied for; and

(g) provide any information the chief executive reasonably requires to decide whether the applicant is suitable and eligible to be a registered employee.

(2) The application must be accompanied by—

(a) an application fee; and

(b) a registration issue fee; and

(c) 2 recent colour photographs of the applicant of a size prescribed under a regulation and certified as

photographs of the applicant in the way prescribed under a regulation.

84A Requirement to give chief executive information or material about application

(1) The chief executive may, by written notice given to an applicant for registration, require the applicant to give the chief executive information or material the chief executive reasonably considers is needed to consider the applicant's application for the registration within a stated reasonable time.

(2) The applicant is taken to have withdrawn the application if the applicant fails to comply with the chief executive's requirement within the stated reasonable time.

Part 4 Suitability of applicants

85 Suitability of applicants

(1) A person is not a suitable person to obtain registration as a registered employee if the person is—

(a) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or

(b) currently disqualified from holding a licence or registration certificate; or

(c) a person the chief executive decides under section 86 is not a suitable person to obtain registration as a registered employee.

(2) An individual who is not a suitable person can not obtain registration as a registered employee.

86 Chief executive must consider suitability of applicants

(1) The chief executive must, when deciding whether a person is a suitable person to obtain registration as a registered employee, consider the following things—

(a) the person's character;

(b) whether the person held a licence or registration under this Act, the repealed Act or a corresponding law that was suspended or cancelled;

(c) whether an amount has been paid from the fund because the person did, or omitted to do, something that gave rise to the claim against the fund;

(d) whether the person has been disqualified under this Act, the repealed Act or a corresponding law from being a licensee, an executive officer of a corporation or the holder of a certificate of registration;

(e) whether, within the previous 5 years, the tribunal or the District Court has made an order under this Act against the person because of the person's involvement as a marketeer of residential property;

(f) the person's criminal history;

(g) if the person is affected by bankruptcy action—

(i) the circumstances giving rise to the person being affected by bankruptcy action; and

(ii) whether the person took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the person being affected by bankruptcy action; and

(iii) whether the person is in a position to influence significantly the management of a licensee's business;

(h) whether the person has been convicted of an offence against this Act, the repealed Act or a corresponding law;

(i) whether the person is capable of satisfactorily performing the activities of a registered employee in the category applied for;

(j) whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act;[29]

(k) another thing the chief executive may consider under this Act.

(2) If the chief executive decides a person is not a suitable person to obtain registration as a registered employee, the chief executive must give the person an information notice within 14 days after the decision is made.

(3) In this section—

fund includes the auctioneers and agents fidelity guarantee fund under the repealed Act.

87 Investigations about suitability of applicants

(1) The chief executive may make investigations about the applicant to help the chief executive decide whether the applicant is a suitable person to obtain registration as a registered employee.

(2) Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a written report about the applicant's criminal history.

(3) The commissioner must give the report to the chief executive.

(4) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.

88 Criminal history is confidential document

(1) A public service employee performing functions under this Act must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 87.

Maximum penalty—100 penalty units.

29 See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers).

(2) However, the person does not contravene subsection (1) if—

(a) disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under or in relation to this Act; or

(b) the disclosure is otherwise required or permitted by law.

(3) The chief executive must destroy the report as soon as practicable after considering the person's suitability to obtain registration as a registered employee.

89 Requirement to give chief executive information or material about suitability

(1) This section applies to an applicant for registration as a registered employee or the renewal or restoration of the registration.

(2) The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive information or material the chief executive reasonably considers is needed to establish the applicant's suitability for the registration within a stated reasonable time.

(3) The applicant is taken to have withdrawn the application if, within the stated reasonable time, the applicant fails to comply with the chief executive's requirement.

Part 5 Eligibility for registration

90 Eligibility for registration as registered employee

(1) An individual is eligible to obtain registration as a registered employee in a category mentioned in section 82[30] only if the individual—

(a) is at least 18 years; and

30 Section 82 (Categories of registered employees)

(b) has the educational or other qualifications that may be prescribed under a regulation for the category of registered employees being applied for.

(2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—

(a) has a comparable qualification; or

(b) within 2 years before the day the individual's application for employee registration is received by the chief executive—

(i) has been the holder of a registration certificate under this Act for the category of registered employees being applied for; or

(ii) has been the holder of a comparable certificate under the repealed Act.

Part 6 Issue of registration certificate

91 Chief executive may issue or refuse to issue registration certificate

(1) The chief executive may issue or refuse to issue a registration certificate to an applicant.

(2) The chief executive may issue a registration certificate to an applicant only if the chief executive is satisfied—

(a) the applicant is a suitable person; and

(b) the applicant is eligible to obtain the registration; and

(c) the application is properly made.

(3) For subsection (2)(c), the application is properly made only if it complies with section 84[31] and is accompanied by the things mentioned in that section.

31 Section 84 (Application for registration)

(4) If the chief executive refuses to issue the registration certificate, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.

(5) If the applicant's application for a registration certificate is refused, the applicant may not file another application for a registration certificate—

(a) for 3 months after the day the chief executive gives the applicant the information notice under subsection (4); or

(b) if the applicant applies to the tribunal to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed.

92 Registration certificate—conditions

(1) The chief executive may issue a registration certificate on the conditions the chief executive considers necessary or desirable—

(a) for the proper performance of the activities authorised by the certificate; or

(b) for another purpose consistent with the achievement of the objects of this Act.

Example—

If the chief executive decides to issue a registration certificate to a person who is or has been affected by bankruptcy action, the chief executive may issue the certificate subject to a condition that the person not receive, bank or otherwise be responsible for dealing with trust account moneys.

(2) A condition may limit or prohibit the performance of an activity authorised under this Act.

(3) If the chief executive decides to issue the certificate on condition, the chief executive must give the applicant an information notice within 14 days after the decision is made.

Part 7 Activities authorised under registration certificate

93 What a registration certificate authorises

(1) A registration certificate authorises the holder of the certificate to perform—

(a) if the holder is a real estate salesperson—any activity that may be performed by the real estate agent who employs the holder; and

(b) if the holder is a pastoral house salesperson—any activity that may be performed by the pastoral house who employs the holder; and

(c) if the holder is a trainee auctioneer—any activity that may be performed by the auctioneer who supervises the trainee; and

(d) if the holder is a property developer salesperson—any activity that may be performed by the property developer who employs the holder; and

(e) if the holder is a motor salesperson—any activity that may be performed by the motor dealer who employs the holder; and

(f) if the holder is a commercial subagent—any activity that may be performed by the commercial agent who employs the holder.

(2) However, the registration certificate does not authorise the holder to perform an activity that the holder is not authorised to perform—

(a) because of a condition to which the certificate is subject; or

(b) under the holder's employment authority.

Part 8 Renewal and restoration of registration certificates

Division 1 Renewal

94 Application for renewal

(1) A registered employee must apply for renewal of the employee's registration certificate before the certificate expires.

(2) The application must—

(a) be made to the chief executive in the approved form; and

(b) state the term of the registration being applied for; and

(c) state the name and business address of the licensee who employs the employee; and

(d) be accompanied by—

(i) an application fee; and

(ii) a registration certificate renewal fee.

(3) If requested by the chief executive, the application must be accompanied by 2 recent colour photographs of the applicant that are—

(a) of a size prescribed under a regulation; and

(b) certified as photographs of the applicant in the way prescribed under a regulation.

95 Chief executive may renew or refuse to renew registration certificate

(1) The chief executive must consider the renewal application and may renew or refuse to renew the registration certificate.

(2) The chief executive may renew the certificate only if the chief executive is satisfied—

(a) the registered employee is a suitable person; and

(b) the application is properly made; and

(c) the employee meets the eligibility requirements for the certificate.

(3) For subsection (2)(b), an application is properly made only if it complies with section 94(2) and is accompanied by the things mentioned in that subsection.

(4) If the chief executive decides to refuse the application, the chief executive must give the employee an information notice within 14 days after the decision is made.

96 Registration certificate taken to be in force while application for renewal is considered

If an application is made under section 94,[32] the registered employee's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the employee's application for renewal is decided under section 95 or taken to have been withdrawn under section 89(3).[33]

Division 2 Restoration

97 Application for restoration

(1) If a registered employee's registration certificate expires, the employee may apply for restoration of the certificate.

(2) The application must—

(a) be made within 3 months after the expiry; and

(b) be made to the chief executive in the approved form; and

(c) state the term of the registration being applied for; and

(d) state the name and business address of the licensee who employs the employee; and

(e) be accompanied by—

32 Section 94 (Application for renewal)

33 Section 89 (Requirement to give chief executive information or material about suitability)

(i) an application fee; and

(ii) a registration renewal fee; and

(iii) a registration restoration fee.

(3) If requested by the chief executive, the application must be accompanied by 2 recent colour photographs of the applicant that are—

(a) of a size prescribed under a regulation; and

(b) certified as photographs of the applicant in the way prescribed under a regulation.

98 Chief executive may restore or refuse to restore registration certificate

(1) The chief executive must consider the restoration application and may restore or refuse to restore the registration certificate.

(2) The chief executive may restore the certificate only if the chief executive is satisfied—

(a) the registered employee is a suitable person; and

(b) the application is properly made; and

(c) the employee meets the eligibility requirements for the certificate.

(3) For subsection (2)(b), an application is properly made only if it complies with section 97(2) and is accompanied by the things mentioned in that subsection.

(4) If the chief executive decides to refuse the application, the chief executive must give the employee an information notice within 14 days after the decision is made.

(5) If the chief executive decides to restore the certificate—

(a) the certificate is taken to have been renewed on the day it would, apart from section 99, have expired (the ***initial expiry date***); and

(b) to remove any doubt, a thing done during the period starting on the initial expiry date and ending on the day the certificate is restored under this section is taken to have been as validly done as it would have been if the

certificate had been renewed immediately before the initial expiry date.

99 Registration certificate taken to be in force while application for restoration is considered

If an application is made under section 97,[34] the employee's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the employee's application for restoration is decided under section 98 or taken to have been withdrawn under section 89(3).[35]

Part 9 Dealings with registration certificates

Division 1 Transfer of registration certificate

100 Transfer of registration certificate prohibited

A registration certificate may not be transferred.

Division 2 General

101 Amendment of registration certificate conditions

(1) The chief executive may amend the conditions of a registration certificate—

(a) on the registered employee's application; or

(b) on the order of the tribunal after a disciplinary hearing; or

34 Section 97 (Application for restoration)

35 Section 89 (Requirement to give chief executive information or material about suitability)

(c) on the chief executive's own initiative.

Note—

The tribunal may deal with the conditions of a person's registration certificate under section 529 (Orders tribunal may make on disciplinary charge hearing).

(2) An application under subsection (1)(a) must be made to the chief executive in the approved form and be accompanied by the application fee prescribed under a regulation.

(3) Before making an amendment under subsection (1)(a), the chief executive must be satisfied the registered employee meets the eligibility requirements the chief executive specifies as relevant to the amendment of the condition.

(4) Before making an amendment under subsection (1)(c), the chief executive must—

(a) give written notice to the registered employee—

(i) of the particulars of the proposed amendment; and

(ii) that the employee may make written submissions to the chief executive about the proposed amendment before a stated day, not later than 14 days after the notice is given to the employee; and

(b) have regard to submissions made to the chief executive by the registered employee before the stated day.

(5) Subsection (4) does not apply if the chief executive decides that the amendment must be made urgently to ensure compliance with this Act.

(6) If the chief executive decides to amend the conditions of a registration certificate under subsection (1)(c), the chief executive must give written notice of the amendment to the registered employee and an information notice within 14 days after the decision is made.

(7) The amendment takes effect—

(a) on the day the written notice of the amendment is given to the registered employee; or

(b) if a later day is stated in the notice, the stated day.

(8) If the chief executive decides to refuse to make an amendment requested under subsection (1)(a), the chief executive must

give the registered employee an information notice within 14 days after the decision is made.

102 Return of registration certificate for amendment of conditions

(1) If the chief executive amends the conditions of a registration certificate under section 101, the chief executive may ask the registered employee to produce the certificate for amendment within a stated period of not less than 14 days.

(2) The employee must comply with a request under subsection (1), unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—100 penalty units.

103 Surrender of registration certificate

(1) A registered employee may surrender the employee's registration certificate by giving written notice, and returning the certificate, to the chief executive.

(2) A registration certificate surrendered under this section stops having effect on the day it is surrendered.

Part 10 Immediate suspension and cancellation of registration certificates

104 Immediate suspension

(1) This section applies if the chief executive believes, on reasonable grounds, that—

(a) both—

(i) an irregularity or deficiency exists in a licensee's trust account; and

(ii) a registered employee of the licensee may be responsible for the irregularity or deficiency; or

(b) a registered employee—

(i) has contravened or is contravening this Act; or

(ii) is likely or proposing to engage in conduct that would contravene this Act.

(2) The chief executive may suspend the registered employee's registration certificate, whether or not disciplinary proceedings have been started under this Act.

(3) The certificate may be suspended for the period (not more than 28 days), and on the conditions, the chief executive decides.

(4) The chief executive must give the employee an information notice within 14 days after suspending the employee's registration.

(5) The employee must return the certificate to the chief executive within 14 days after the employee receives the notice, unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—100 penalty units.

105 Immediate cancellation

(1) The registration certificate of a registered employee is cancelled if the employee is convicted of a serious offence.

(2) The employee must return the certificate to the chief executive within 14 days after the conviction, unless the employee has a reasonable excuse.

Maximum penalty for subsection (2)—100 penalty units.

Part 11 General provisions about employee registration

106 Form of registration certificate

(1) A registration certificate must be issued in the approved form.

(2) However, the chief executive may approve—

(a) a form of certificate for office display purposes; and

(b) a form of certificate for personal identification purposes.

Example—

1 A form of certificate for office display purposes may be in the form suitable for framing and display in an office.

2 A form of certificate for personal identification purposes may be in the form of a small photo identification card suitable for carrying easily on one's person.

(3) The certificate must contain the following particulars—

(a) the name of the registered employee;

(b) the date of issue of the certificate;

(c) the expiry date of the certificate;

(d) for a personal identification certificate, a recent photograph of the employee;

(e) other particulars that may be prescribed under a regulation.

107 Term of registration certificate

A registration certificate may be issued for a 1 year or 3 year term.

108 Replacement certificates

(1) A registered employee may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged registration certificate.

(2) The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.

(3) The chief executive must grant the application if the chief executive is satisfied the certificate has been lost, stolen or destroyed, or damaged in a way to require its replacement.

(4) If the chief executive grants the application, the chief executive must issue another certificate to the applicant to replace the lost, stolen, destroyed or damaged certificate.

109 Register of registration certificates

(1) The chief executive must keep a register of registration certificates and applications for registration certificates (***registration certificate register***).

(2) The registration certificate register may form part of the licence register.

(3) The registration certificate register must contain the following particulars—

(a) for each applicant for a registration certificate—

(i) the applicant's name; and

(ii) the name and business address of the licensee by whom the applicant is to be employed; and

(iii) the category of employee registration applied for; and

(iv) the date of the application; and

(v) the application number;

(b) for each registered employee—

(i) the employee's name; and

(ii) the name and business address of the licensee who employs the employee; and

(iii) the category of the employee's employee registration; and

(iv) the dates of issue and expiry of the employee's current registration certificate; and

(v) any conditions imposed on the certificate; and

(vi) the employee's registration certificate number; and

(vii) particulars of any surrender, suspension, cancellation or revocation of the employee's registration certificate or any licence or certificate issued to the employee under this or the repealed Act.

(4) A person may, on payment of any fee that may be prescribed under a regulation, inspect, or get a copy of details in, the part

of the register containing the particulars mentioned in subsection (3)—

(a) at the department's head office when it is open to the public; or

(b) by using a computer.

(5) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.

(6) The register may be kept in any way the chief executive considers appropriate.

(7) In this section—

contain includes record and store.

110 Registered employees to notify chief executive of changes in circumstances

(1) A registered employee must give written notice to the chief executive of a prescribed change in the employee's circumstances within 14 days after the change.

Maximum penalty—100 penalty units.

(2) In this section—

prescribed change means a change prescribed under a regulation.

Chapter 4 Resident letting agents

Part 1 Resident letting agent's licence

111 What a resident letting agent's licence authorises

(1) A resident letting agent's licence authorises the holder of the licence (***resident letting agent***) to perform the following activities as an agent for others for reward—

(a) letting lots in a building complex;

(b) collecting rents for lots in a building complex.

(2) A resident letting agent may perform the activities in the carrying on of a business, either alone or with others, or as an employee of someone else.

(3) The chief executive must, by condition of the licence, limit the performance of the activities by the resident letting agent to 1 or more stated building complexes.

(4) The chief executive may authorise the resident letting agent to perform the activities in more than 1 building complex if—

(a) the chief executive is satisfied—

(i) each building complex is on land contiguous to land on which another building complex in relation to which the letting agent is, or is to be, authorised to perform the activities is situated; and

(ii) the resident letting agent has the approval of each appropriate body corporate to carry on a business of letting lots, and collecting rent for lots, in the complex; or

(b) both of the following apply—

(i) immediately before the commencement of section 607,[36] a person held a resident real estate agent's licence or corporation licence (with a director holding a resident real estate agent's licence) in relation to all the building complexes;

(ii) since the commencement, a person has been authorised under a licence to perform the activities of a resident letting agent for 1 or more of the building complexes.

(5) For subsection (4)(a), land is ***contiguous*** with other land only if the parcels of land have a common boundary that is not separated by a public road.

36 Section 607 (Existing licences)

Part 2 Conduct provisions

Division 1 Carrying on business

112 Carrying on of business under resident letting agent's licence

(1) An individual who carries on the business of a resident letting agent with others is not required to hold a resident letting agent's licence or real estate agent's licence if—

(a) at least 1 of the persons with whom the individual carries on business is a resident letting agent or real estate agent; and

(b) the individual does not perform the activities of a resident letting agent; and

(c) the individual is a suitable person to hold a licence.

(2) A resident letting agent who is an individual must reside permanently in the building complex or, if the letting agent is authorised to perform activities in relation to more than 1 building complex, 1 of the building complexes for which the letting agent is authorised to perform activities.

Maximum penalty—200 penalty units.

(3) A resident letting agent that is a corporation must ensure that an individual who performs the activities of a resident letting agent for the corporation resides permanently in the building complex or, if the letting agent is authorised to perform activities for more than 1 building complex, 1 of the building complexes for which the letting agent is authorised to perform activities.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[37]—200 penalty units; or

(b) for a corporation—1000 penalty units.

37 Section 591 (Executive officers must ensure corporation complies with Act)

(4) Subsections (2) and (3) do not apply to a resident letting agent whose licence is deactivated.

113 Licensee to be in charge of a resident letting agent's business at a place

(1) A resident letting agent who is an individual and a principal licensee must be in charge of the agent's business at the agent's registered office.[38]

Maximum penalty—200 penalty units.

(2) A resident letting agent that is a corporation must ensure that the individual in charge of the agent's business at the agent's registered office is a resident letting agent or real estate agent.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[39]—200 penalty units; or

(b) for a corporation—1000 penalty units.

(3) If a resident letting agent who is a principal licensee—

(a) is authorised under the letting agent's licence to carry on a business of letting lots in more than 1 building complex; and

(b) has a place of business in each building complex;

the resident letting agent must ensure that another individual who is a resident letting agent or real estate agent is in charge of the agent's business at the other place.

Maximum penalty—200 penalty units.

(4) An individual must not be in charge of a resident letting agent's business at more than 1 place of business.

Maximum penalty—200 penalty units.

38 See section 121 (Registered office).

39 Section 591 (Executive officers must ensure corporation complies with Act)

Division 2 Appointment

114 Appointment of resident letting agent

(1) A resident letting agent must not act as a resident letting agent for a person (the ***client***) to perform an activity (***service***) for the client unless—

(a) the client first appoints the letting agent in writing under this section; or

(b) a previous appointment by the client is assigned to the letting agent under the terms of that appointment or under section 115A and the appointment is in force.

Maximum penalty—200 penalty units.

(2) The appointment may be for the performance of—

(a) a particular service (***single appointment***); or

(b) a number of services over a period (***continuing appointment***).

(3) The appointment must—

(a) state the service to be performed by the letting agent and how it is to be performed; and

(b) state—

(i) in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to any amount that may be prescribed under a regulation; and

(ii) for a single appointment, if commission is payable and expressed as a percentage of rent, the amount of commission expressed in dollars based on the listed rental charge; and

(c) state—

(i) the fees, charges and commission payable for the service; and

(ii) the expenses, including advertising and marketing expenses, the letting agent is authorised to incur in

connection with the performance of the service; and

(iii) the source and the estimated amount of any rebate, discount, commission or benefit that the letting agent may receive in relation to any expenses that the letting agent may incur in connection with the performance of the service; and

(iv) any condition, limitation or restriction on the performance of the service; and

(d) state when the fees, charges and commission for the service become payable; and

(e) if a service to be performed is the letting of lots or the collecting of rent and commission is payable in relation to the service and expressed as a percentage, state that the commission is worked out only on the actual amount of rent collected.

(4) A continuing appointment must state—

(a) the date the appointment ends; and

(b) the appointment may be revoked on the giving of 90 days notice, or some lesser period (not less than 30 days) agreed by the parties.

(5) The notice revoking a continuing appointment must be by signed writing given to the other party.

(6) The revocation of a continuing appointment does not affect existing contracts entered into by the resident letting agent on behalf of the client.

(7) The appointment must be signed and dated by the client and the letting agent or someone authorised or apparently authorised to sign for the letting agent.

(8) The letting agent must give a copy of the signed appointment to the client.

Maximum penalty for subsection (8)—200 penalty units.

115 Form of appointment

(1) The appointment must be in the approved form.

(2) The approved form must include a prominent statement that the client should seek independent legal advice before signing the appointment.

(3) An appointment that does not comply with subsection (1) is ineffective from the time it is made.

115A Assignment of appointments

(1) This section applies if a resident letting agent who holds appointments from clients to perform services for the clients under section 114 for a building complex proposes to assign the appointments to another person who is to become the resident letting agent for the complex (***proposed assignee***) without changing the terms of the appointment.

(2) However, this section does not apply to the assignment of an appointment if—

(a) the terms of the appointment authorise the assignment of the appointment; and

(b) the assignment is made in accordance with the terms of the appointment.

(3) At least 14 days before the resident letting agent assigns the appointments, the letting agent must give each client written notice of the proposed assignment and obtain the client's written approval to the assignment.

(4) The notice must state the following—

(a) the proposed assignee's name;

(b) the appointments are to be assigned without changing the terms of the appointment;

(c) the client may agree or refuse to agree to the proposed assignment;

(d) when the proposed assignment is to take effect.

(5) If a client agrees to the assignment and the resident letting agent assigns the appointment under this section, the appointment is taken, for section 114, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

Division 3 Recovery of reward or expense

116 Commission may be claimed only in relation to actual amounts

(1) This section applies to a resident letting agent who performs, for the payment of a commission, a service of letting lots or collecting rents.

(2) The resident letting agent must not claim commission worked out on an amount more than the actual amount collected.

Maximum penalty—200 penalty units.

117 Restriction on remedy for reward or expense

(1) A person is not entitled to sue for, or recover or retain, a reward or expense for the performance of an activity as a resident letting agent unless, at the time the activity was performed, the person—

(a) held a resident letting agent's licence; and

(b) was authorised under the person's licence to perform the activity; and

(c) had been properly appointed under division 2[40] by the person to be charged with the reward or expense.

(2) A person is not entitled to sue for, or recover or retain, a reward for the performance of an activity as a resident letting agent that is more than the amount of the reward stated in the appointment given under section 114.[41]

(3) However, if the reward for the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or retain, a reward more than the amount allowed under a regulation.

(4) A person is not entitled to sue for, or recover or retain, expenses for the performance of an activity as a resident letting agent that are more than the amount of the expenses

40 Division 2 (Appointment)

41 Section 114 (Appointment of resident letting agent)

stated in the appointment given under section 114 and actually expended.

(5) However, if the amount of expenses that may be incurred in relation to the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or retain, expenses more than the amount allowed under a regulation.

(6) Subsection (3) does not prevent the person suing for, recovering or retaining, in addition to the amount allowed under a regulation for the reward, an amount for GST payable for a supply.

(7) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a resident letting agent other than as provided by this section commits an offence.

Maximum penalty for subsection (7)—200 penalty units.

118 Excess fees etc. to be repaid

(1) This section applies if—

(a) a person is convicted of an offence against section 116(2) or 117(7); and

(b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (***client***) for whom the person performed an activity an amount to which the person was not entitled.

(2) The court must order the person to pay the amount to the client.

(3) The order must be made whether or not any penalty is imposed for the offence.

(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

Division 4 Code of conduct

119 Code of conduct

A regulation may prescribe a code of conduct about resident letting agent practice that may include the following—

(a) setting conduct standards for resident letting agents;

(b) establishing principles for fair trading;

(c) providing for a system of complaint resolution.

120 Complaints about conduct

(1) A person aggrieved by the conduct of a resident letting agent may complain in writing to the chief executive about the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action about the conduct allowed under this Act.

Note—

Breach of a code of conduct is a ground for starting disciplinary proceedings under section 496 (Grounds for starting disciplinary proceedings).

(3) The investigation may take place and action may be taken against a person who was a resident letting agent even though the person is no longer a resident letting agent.

Part 3 General

121 Registered office

A resident letting agent's ***registered office*** is—

(a) for a resident letting agent who is a principal licensee—

(i) the place the letting agent specifies in the letting agent's application for a resident letting agent's

licence as the letting agent's principal place of business; or

(ii) another place notified to the chief executive by the letting agent in the approved form as the letting agent's principal place of business; and

(b) for a resident letting agent who is an employed licensee—

(i) the place the letting agent specifies in the letting agent's application for a resident letting agent's licence as the letting agent's business address; or

(ii) another place notified to the chief executive by the letting agent in the approved form as the letting agent's business address.

122 Resident letting agent to notify chief executive of change in place of business etc.

(1) A resident letting agent who is a principal licensee must—

(a) notify the chief executive in the approved form of any change in the letting agent's principal place of business within 14 days after the change; and

(b) notify the chief executive in the approved form of the closure of any place where the letting agent carries on business within 14 days after the closure; and

(c) notify the chief executive in the approved form of the opening of any place where the letting agent carries on business within 14 days after the opening.

Maximum penalty—200 penalty units.

(2) A resident letting agent who is a principal licensee must notify the chief executive of any change in, or revocation of, the body corporate's approval to the letting agent to carry on the business of letting lots for a building complex within 14 days after the change or revocation.

Maximum penalty—200 penalty units.

(3) A resident letting agent who is an employed licensee must notify the chief executive in the approved form of any change

in the letting agent's business address within 14 days after the change.

Maximum penalty—200 penalty units.

123 Display and publication of licensee's name

(1) A resident letting agent who is a principal licensee must display at each place the resident letting agent carries on business, in the way that may be prescribed under a regulation—

(a) the letting agent's name; and

(b) if the letting agent is not the person in charge of the letting agent's business at the place, the name of the resident letting agent who is in charge of the letting agent's business at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(2) A resident letting agent must not publish in a newspaper or elsewhere an advertisement for the letting agent's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

124 Principal licensee must keep employment register

(1) A resident letting agent who is a principal licensee must keep a register (***employment register***) at each place where the letting agent carries on business.

Maximum penalty—200 penalty units.

(2) The resident letting agent must enter, and keep entered, in the employment register the name, and the other particulars that may be prescribed under a regulation, of each person (***employee***) who is employed as a resident letting agent at the place.

Maximum penalty—200 penalty units.

(3) The resident letting agent must enter the particulars about each employee immediately after the employee is employed at the place.

Maximum penalty—200 penalty units.

(4) The form of the register may be prescribed under a regulation.

124A Access to particular documents

(1) This section applies if a resident letting agent (***existing letting agent***)—

(a) is a letting agent for a community titles scheme; and

(b) enters into a contract to sell management rights for the community titles scheme to another resident letting agent (***new letting agent***).

(2) At least 14 days before the day management rights are to pass to the buyer under the contract, the existing letting agent must make available to the new letting agent the existing letting agent's trust account records for the community titles scheme to which the management rights relate for the prescribed period before the intended date of the sale of the management rights.

(3) If the existing letting agent fails to comply with subsection (2), the new letting agent may avoid the contract.

(4) In this section—

community titles scheme has the meaning given by the *Body Corporate and Community Management Act 1997*, section 10.

letting agent has the meaning given by the *Body Corporate and Community Management Act 1997*, section 16.

management rights has the meaning given by the *Body Corporate and Community Management Act 1997*, schedule 6.

prescribed period means—

(a) 5 years; or

(b) if the existing resident letting agent has been the letting agent for the community titles scheme for a shorter period, the shorter period.

Part 4 Offences

125 Acting as resident letting agent

(1) A person must not, as an agent for someone else for reward, perform an activity that may be done under the authority of a resident letting agent's licence unless the person—

(a) holds a resident letting agent's licence and the performance of the activity is authorised under the person's licence; or

(b) is otherwise permitted under this or another Act to perform the activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A lawyer does not act as a resident letting agent only because the lawyer collects rents in the lawyer's practice for lots in a building complex if the lawyer complies with the requirements of the *Trust Accounts Act 1973* in relation to the rents.

(3) A person does not act as a resident letting agent only because the person collects rents for the service provider for a residential service, as an employee of the service provider, if the rents are collected in the course of the conduct of the service.

126 Resident letting agent must not act for more than 1 party

(1) A resident letting agent must not act for more than 1 party to a transaction.

Maximum penalty—200 penalty units.

(2) If a resident letting agent acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made.

127 Production of licence

A resident letting agent must, if asked by a person with whom the letting agent is dealing, produce the letting agent's licence for inspection by the person.

Maximum penalty—100 penalty units.

Chapter 5 Real estate agents

Part 1 Real estate agent's authorisation and responsibility

Division 1 Real estate agent's licence

128 What a real estate agent's licence authorises

(1) A real estate agent's licence authorises the holder of the licence (***real estate agent***) to perform the following activities as an agent for others for reward—

(a) to buy, sell, exchange, or let places of residence or land or interests in places of residence or land;

(b) to buy, sell, exchange, or let businesses or interests in businesses;

(c) to collect rents;

(d) to buy, sell or exchange livestock or an interest in livestock;

(e) to negotiate for the buying, selling, exchanging, or letting of something mentioned in paragraph (a) or (b);

(f) to negotiate for the buying, selling or exchanging of something mentioned in paragraph (d).

(2) A real estate agent may perform the activities in the carrying on of a business, either alone or with others, or as an employee of someone else.

Division 2 Responsibilities of persons in charge of a licensee's business for salespersons

129 Responsibility for acts and omissions of salespersons

(1) A real estate agent who is a principal licensee must take reasonable steps to ensure each real estate salesperson employed by the agent is properly supervised, acts only within the scope of the person's employment authority under section 130 and complies with this Act.

(2) A real estate agent who is an employed licensee in charge of a licensee's business at a place of business must take reasonable steps to ensure each real estate salesperson employed at the place is properly supervised, acts only within the scope of the person's employment authority under section 130 and complies with this Act.

(3) A real estate agent who fails to comply with subsection (1) or (2) is liable to disciplinary action under chapter 14, part 3.[42]

130 Real estate agent must give salespersons employment authority

Immediately after a real estate agent starts to employ a real estate salesperson, the real estate agent must give the salesperson a statement (***employment authority***) clearly specifying the activities of a real estate agent the agent authorises the salesperson to perform for the agent during the salesperson's employment by the agent.

Maximum penalty—200 penalty units.

42 Chapter 14 (Claims against the fund and other proceedings), part 3 (Disciplinary proceedings)

Part 2 Conduct provisions

Division 1 Carrying on business

131 Carrying on of business under real estate agent's licence

An individual who carries on the business of a real estate agent with others is not required to hold a real estate agent's licence if—

(a) at least 1 of the persons with whom the individual carries on business is a real estate agent; and

(b) the individual does not perform the activities of a real estate agent; and

(c) the individual is a suitable person to hold a licence.

132 Licensee to be in charge of a real estate agent's business at a place

(1) A real estate agent who is an individual and a principal licensee must—

(a) be in charge of the agent's business at the agent's registered office;[43] and

(b) if the real estate agent has more than 1 place of business, ensure that at each other place of business—

(i) that is a resident letting agency—a real estate agent, or resident letting agent, who is an individual, is in charge of the real estate agent's business at the place of business; or

(ii) that is not a resident letting agency—a real estate agent who is an individual is in charge of the real estate agent's business at the place of business.

Maximum penalty—200 penalty units.

(2) A real estate agent that is a corporation and a principal licensee (***corporate agent***) must ensure that—

43 See section 156 (Registered office).

(a) the individual in charge of the corporate agent's business at its registered office is a real estate agent; and

(b) if the corporate agent has more than 1 place of business, ensure that at each other place of business—

(i) that is a resident letting agency—a real estate agent, or resident letting agent, who is an individual is in charge of the corporate agent's business at the place of business; or

(ii) that is not a resident letting agency—a real estate agent who is an individual is in charge of the corporate agent's business at the place of business.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[44]—200 penalty units; or

(b) for a corporation—1000 penalty units.

(3) An individual must not be in charge of a real estate agent's business at more than 1 place.

Maximum penalty—200 penalty units.

(4) It is not an offence against subsection (1) or (2) for a real estate agent who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.

(5) For subsection (4), land is ***contiguous*** with other land only if the parcels of land have a common boundary that is not separated by a public road.

(6) In this section—

resident letting agency means a place of business at which the only business carried on as a real estate agent is the business of a resident letting agent.

44 Section 591 (Executive officers must ensure corporation complies with Act)

Division 2 Appointment

133 Appointment of real estate agent—general

(1) A real estate agent must not act as a real estate agent for a person (***client***) to perform an activity (***service***) for the client unless—

(a) the client first appoints the real estate agent in writing; or

(b) a previous appointment by the client is assigned to the real estate agent under the terms of that appointment or under section 135A and the appointment is in force.

Maximum penalty—200 penalty units.

(2) The appointment may be for the performance of—

(a) a particular service (***single appointment***); or

(b) a number of services over a period (***continuing appointment***).

(3) The appointment must, for each service—

(a) state the service to be performed by the real estate agent and how it is to be performed; and

(b) state, in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to any amount that may be prescribed under a regulation; and

(c) state—

(i) the fees, charges and any commission payable for the service; and

(ii) the expenses, including advertising and marketing expenses, the agent is authorised to incur in connection with the performance of each service or category of service; and

(iii) the source and the estimated amount or value of any rebate, discount, commission or benefit that the agent may receive in relation to any expenses that the agent may incur in connection with the performance of the service; and

(iv) any condition, limitation or restriction on the performance of the service; and

(d) state when the fees, charges and any commission for the service become payable; and

(e) if the service to be performed is the sale or letting of property or the collecting of rents and commission is payable in relation to the service and expressed as a percentage of an estimated sale price or amount to be collected, state that the commission is worked out only on the actual sale price or the amount actually collected; and

(f) if the appointment is for a sole or exclusive agency, state the date the appointment ends.

Note—

For additional requirements for an appointment for a sole or exclusive agency, see section 135.

(4) A continuing appointment must state—

(a) the date the appointment ends; and

(b) that the appointment, other than to the extent it relates to the sale of land or interests in land, may be revoked on the giving of 90 days notice, or some lesser period (not less than 30 days) agreed by the parties.

(5) The notice revoking a continuing appointment must be by signed writing given to the other party.

(6) The revocation of a continuing appointment does not affect existing contracts entered into by the real estate agent on behalf of the client.

(7) The appointment must be signed and dated by the client and the real estate agent or someone authorised or apparently authorised to sign for the agent.

(8) The real estate agent must give a copy of the signed appointment to the client.

Maximum penalty—200 penalty units.

(9) If an appointment under this section authorises a sale by auction, an appointment under section 210[45] is not required.

(10) This section does not apply if the service to be performed is the sale of livestock.

134 Form of appointment

(1) The appointment must be in the approved form.

(2) The approved form must include a prominent statement that the client should seek independent legal advice before signing the appointment.

(3) An appointment that does not comply with subsection (1) is ineffective from the time it is made.

134A Pre-appointment advice about types of appointment

If the appointment is for the sale of a place of residence or land or an interest in a place of residence or land, before the appointment is signed, the real estate agent must specifically bring to the client's notice the information in the form of appointment about—

(a) the effect of the following—

(i) an open listing;[46]

(ii) an exclusive agency;[47]

(iii) a sole agency;[48] and

(b) the difference between sole agency and exclusive agency.

Maximum penalty—200 penalty units.

Note—

The commission of an offence against this section also renders the appointment ineffective under section 137(3).

45 Section 210 (Appointment of auctioneer—general)

46 See section 16 (Meaning of *open listing*).

47 See section 19(2) (Difference between *exclusive agency* and *sole agency*).

48 See section 19(3) (Difference between *exclusive agency* and *sole agency*).

135 Appointment of real estate agent—sole and exclusive agencies

(1) If the appointment is for a sole or exclusive agency, before the appointment is signed, the real estate agent must discuss with the client whether the appointment is to be for a sole agency or an exclusive agency and specifically bring to the client's notice the information in the form of appointment about—

(a) the proposed term of the appointment; and

(b) if the appointment is for the sale of residential property, the client's entitlement to negotiate the term of the appointment up to a maximum term of 60 days; and

(c) the difference between sole agency and exclusive agency, unless the information has been brought to the client's notice under section 134A; and

(d) the consequences for the client if the property is sold by someone other than the agent during the term of the appointment.

Maximum penalty—200 penalty units.

Note—

The commission of an offence against this subsection also renders an appointment for the sale of a place of residence or land or an interest in a place of residence or land ineffective under section 137(3).

(2) The appointment may include provision that, at the end of the term of a sole or exclusive agency, the appointment of the agent continues under an open listing[49] that may be ended at any time by the agent or the client.

(3) Subsection (1)(b) does not apply if the appointment—

(a) is for the sale of 3 or more resident properties; or

(b) is for the sale of a lot in a community titles scheme as part of the sale of management rights to the person who is to become the letting agent for the community titles scheme.

(4) In this section—

49 See section 16 (Meaning of *open listing*).

community titles scheme has the meaning given by the *Body Corporate and Community Management Act 1997*, section 10.

letting agent has the meaning given by the *Body Corporate and Community Management Act 1997*, section 16.

management rights has the meaning given by the *Body Corporate and Community Management Act 1997*, schedule 6.

135A Proposal for assignment of appointments

(1) This section applies if a real estate agent who holds appointments from clients to perform services for the clients under section 133 proposes to assign the appointments to another real estate agent (***proposed assignee***) without changing the terms of the appointment.

(2) However, this section does not apply to the assignment of an appointment if—

(a) the terms of the appointment authorise the assignment of the appointment; and

(b) the assignment is made in accordance with the terms of the appointment.

(3) At least 14 days before the real estate agent assigns the appointments, the agent must give each client written notice of the proposed assignment.

(4) The notice must state the following—

(a) the proposed assignee's name;

(b) the appointments are to be assigned without changing the terms of the appointment;

(c) the client may agree or refuse to agree to the proposed assignment;

(d) when the proposed assignment is to take effect.

(5) If a client agrees to the assignment and the real estate agent assigns the appointment under this section, the appointment is taken, for section 133, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

136 Restriction on reappointment of real estate agents for sales of residential property

(1) A real estate agent may be reappointed for a sole or exclusive agency for the sale of residential property for 1 or more terms of not more than 60 days.

(2) The limitation on the term of reappointment under subsection (1) does not apply if the reappointment is for the sale of 3 or more residential properties.

(3) A real estate agent appointed for the sale of residential property under a sole or exclusive agency commits an offence if the agent is reappointed for the sale earlier than 14 days before the term of the sole or exclusive agency ends.

Maximum penalty for subsection (3)—200 penalty units.

Note—

The commission of an offence against this subsection in relation to the reappointment also renders the reappointment ineffective under section 137.

136A Form of reappointment

(1) The reappointment of a real estate agent under section 136 must be made in the approved form.

(2) A reappointment that does not comply with subsection (1) is ineffective from the time it is made.

137 When appointments and reappointments are ineffective

(1) The appointment of a real estate agent for the sale of residential property under a sole or exclusive agency is ineffective from the time it is made if the term of the appointment is more than 60 days.

(2) Subsection (1) does not apply if the appointment is for the sale of 3 or more residential properties.

(3) The appointment of a real estate agent for the sale of a place of residence or land or an interest in a place of residence or land is ineffective from the time it is made if the real estate agent commits an offence against section 134A or 135(1).

(4) The reappointment of a real estate agent for a further term of sole or exclusive agency for the sale of residential property is ineffective from the time it is made if the real estate agent commits an offence against section 136(3) in relation to the reappointment.

Division 3 Disclosure of interest

138 Disclosures to prospective buyer

(1) A residential property agent for the sale of residential property must disclose the following to any prospective buyer of the property—

(a) any relationship, and the nature of the relationship (whether personal or commercial), the agent has with anyone to whom the agent refers the buyer for professional services associated with the sale;

Examples of relationships for paragraph (a)—

1 A family relationship.

2 A business relationship, other than a casual business relationship.

3 A fiduciary relationship.

4 A relationship in which 1 person is accustomed, or obliged, to act in accordance with the directions, instructions, or wishes of the other.

(b) whether the agent derives or expects to derive any benefit from a person to whom the agent has referred the buyer and, if so, the amount or value of the benefit;

(c) the amount, value or nature of any benefit any person has received, receives, or expects to receive in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property.

Examples for paragraph (c) of persons who may receive a benefit—

- seller
- finance broker
- financial adviser

- financier
- property valuer
- solicitor
- residential property agent.

Maximum penalty—200 penalty units.

(2) The disclosure is effective for subsection (1) only if it is—

(a) given to the prospective buyer in the approved form; and

(b) acknowledged by the prospective buyer in writing on the approved form; and

(c) given and acknowledged before a contract for the sale of the residential property is entered into.

(3) Also, for subsection (1)(c), disclosure in compliance with the approved form is sufficient.

(4) In this section—

benefit means monetary or other benefit.

residential property agent means—

(a) a real estate agent; or

(b) a real estate salesperson acting for the real estate agent; or

(c) a person acting as a real estate agent in contravention of section 160;[50] or

(d) a person acting as a real estate salesperson in contravention of section 161.[51]

50 Section 160 (Acting as real estate agent)

51 Section 161 (Pretending to be real estate salesperson)

Division 4 Recovery of reward or expense

139 Commission may be claimed only in relation to actual amounts

(1) This section applies to a real estate agent who performs, for the payment of a commission, a service of selling or letting property or collecting rents.

(2) The real estate agent must not claim commission worked out on an amount more than the actual sale price of the property or the amount collected.

Maximum penalty—200 penalty units.

140 Restriction on recovery of reward or expense—no proper authorisation etc.

(1) A person is not entitled to sue for, or recover or retain, a reward or expense for the performance of an activity as a real estate agent unless, at the time the activity was performed, the person—

(a) held a real estate agent's licence; and

(b) was authorised under the person's licence to perform the activity; and

(c) had been properly appointed under division 2[52] by the person to be charged with the reward or expense.

(2) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a real estate agent other than as provided by subsection (1) commits an offence.

Maximum penalty for subsection (2)—200 penalty units.

141 Restriction on recovery of reward or expense above amount allowed

(1) A person is not entitled to sue for, or recover or retain, a reward for the performance of an activity as a real estate agent

52 Division 2 (Appointment)

that is more than the amount of the reward stated in the appointment given under section 133.[53]

(2) However, if the reward for the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or retain, a reward more than the amount allowed under the regulation.

(3) A person is not entitled to sue for, or recover or retain, expenses for the performance of an activity as a real estate agent that are more than the amount of the expenses stated in the appointment given under section 133 and actually expended.

(4) However, if the amount of expenses that may be incurred in relation to the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or retain, an amount more than the amount allowed under the regulation.

(5) Subsection (2) does not prevent the person suing for, recovering or retaining, in addition to the amount allowed under a regulation for the reward, an amount for GST payable for a supply.

(6) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a real estate agent other than as provided by this section commits an offence.

Maximum penalty for subsection (6)—200 penalty units.

142 Excess commission etc. to be repaid

(1) This section applies if—

(a) a person is convicted of an offence against section 139(2), 140(2) or 141(6); and

(b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (***client***) for whom the person performed an activity an amount to which the person was not entitled.

53 Section 133 (Appointment of real estate agent—general)

(2) The court must order the person to pay the amount to the client.

(3) The order must be made whether or not any penalty is imposed on the conviction.

(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

Division 5 Interests in property

143 Definition for div 5

In this division—

obtain includes being in any way concerned in obtaining.

144 Beneficial interest—options

(1) This section applies to property placed by a person (***client***) with a real estate agent for sale.

(2) The real estate agent commits an offence if the agent obtains from the client an option to purchase the property in which the agent has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) A real estate salesperson employed by the real estate agent commits an offence if the salesperson obtains from the client an option to purchase the property in which the salesperson has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) The real estate agent must not sell the property if the agent obtains a beneficial interest in an option to purchase the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

145 Beneficial interest—other than options

(1) This section applies to property placed by a person (***client***) with a real estate agent for sale, but does not apply if section 144 applies.

(2) The real estate agent commits an offence if the agent obtains a beneficial interest in the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) A real estate salesperson employed by the real estate agent commits an offence if the salesperson obtains a beneficial interest in the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) A person does not contravene subsection (2) or (3) if—

(a) the person—

(i) before a contract for the sale of the property is entered into, obtains the client's written acknowledgment in the approved form that the client—

(A) is aware that the person is interested in obtaining a beneficial interest in the property; and

(B) consents to the person obtaining the interest; and

(ii) acts fairly and honestly in relation to the sale; and

(b) no commission or other reward is payable in relation to the sale; and

(c) the client is in substantially as good a position as the client would be if the property were sold at fair market value.

145A Return of beneficial interest if in form of commission

(1) This section applies if—

(a) a person is convicted of an offence against section 145(2) or (3); and

(b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (***client***) for whom the person performed an activity an amount of commission to which the person was not entitled.

(2) The court must order the person to pay the amount to the client.

(3) The order must be made whether or not any penalty is imposed on the conviction.

(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

146 Non-application of s 145 for particular livestock sales

Section 145 does not apply in relation to livestock sales if the real estate agent obtains the client's written acknowledgment that the client—

(a) is aware that the real estate agent or a real estate salesperson is interested in obtaining a beneficial interest in the livestock; and

(b) consents to the real estate agent or a real estate salesperson obtaining the interest.

Division 6 Lands not lawfully useable for residential purposes

147 Definition for div 6

In this division—

vacant land means land on which there are no structural improvements, other than fencing.

148 Application of div 6

This division applies to a sale or proposed sale of vacant land if—

(a) the sale is by a real estate agent either as agent for another or as principal; and

(b) the land is within—

(i) the City of Brisbane area; or

(ii) a local government area or joint local government area under the *Local Government Act 1993*; and

(c) the land can not, as at the day of sale, be lawfully used for residential purposes.

149 Notice to be given about vacant land

(1) The real estate agent must give to a proposed buyer a written statement under this section.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) The real estate agent must give the statement to the proposed buyer before the buyer signs any contract in relation to the sale.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) The statement must include the following particulars—

(a) the land, clearly identified (including by lot-on-plan, or similar, description), to which the statement relates;

(b) the names and addresses of the seller of the land and the proposed buyer;

(c) a clear statement that the use of the land for residential purposes is unlawful;

(d) a clear statement that if the buyer erects on the land a place of residence or otherwise uses the land for residential purposes contrary to law—

(i) the buyer may commit an offence; and

(ii) a named local government may be lawfully empowered to demolish the place of residence or other residential structure;

(e) the date on which the statement is given.

(4) The statement must be signed and dated by the real estate agent and the proposed buyer.

(5) The real estate agent must—

(a) keep a copy of the signed statement at the real estate agent's registered office; and

(b) make it available for immediate inspection by an inspector who asks to see it.

Maximum penalty for subsection (5)—200 penalty units or 2 years imprisonment.

150 Buyer's rights if notice not given or materially defective

(1) A buyer of land, by written notice (***avoidance notice***) given to the seller of the land or the real estate agent, may avoid a contract for the sale of the land if—

(a) the buyer has not been given the notice under section 149; or

(b) the notice has been given to the buyer, but the notice is defective in a material way.

(2) The avoidance notice must be given to the seller or real estate agent within 6 months after the day the buyer entered into the contract.

(3) If the contract is avoided by the buyer under subsection (1), the seller and the real estate agent are liable at law to the buyer for all amounts paid by the buyer—

(a) under the contract; and

(b) for legal and other expenses in relation to the contract after the contract was signed.

(4) A real estate agent who is liable at law under subsection (3) for the repayment to the buyer of an amount paid by the buyer under, or in relation to, the contract must repay the amount within 14 days after becoming liable.

Maximum penalty—200 penalty units.

(5) The buyer may recover an amount mentioned in subsection (3) as a debt.

(6) Judgment recovered against either person liable under subsection (3) for an amount repayable under that subsection does not bar an action against the other person.

(7) However, if separate actions are brought—

(a) the amounts recoverable under the judgments given in the actions must not be more, taken together, than the amount repayable to the buyer; and

(b) in the later of the 2 actions, the plaintiff is not entitled to costs, unless the court decides there were reasonable grounds for bringing the action.

(8) If the buyer avoids the contract under this section after the contract is completed, the buyer must, after repayment of all amounts recoverable by the buyer under subsection (3)—

(a) sign the documents presented to the buyer necessary to convey title to the land to the person lawfully entitled to the land or the person's nominee; and

(b) deliver to the person lawfully entitled to the land or the person's nominee any instrument of title in the buyer's possession or under the buyer's control.

(9) The buyer—

(a) is not liable for any costs associated with a conveyance under subsection (8); and

(b) may recover from the seller and the real estate agent as a debt the buyer's reasonable costs associated with the conveyance.

(10) The liability of the seller and the real estate agent under subsections (3) and (9) is joint and several.

151 Liability to punishment under s 149 or 150 additional to other liabilities at law

Liability to punishment under section 149 or 150 is in addition to other liabilities at law imposed under section 150.

Division 7 Sales of particular businesses

152 Application of div 7

This division applies to the sale of a business for which a resident letting agent's licence is required (***resident letting agent's business***).

153 Notice to be given about sale of resident letting agent's business

(1) A real estate agent who is authorised to sell a resident letting agent's business by the seller of the business must give to a proposed buyer of the business a written statement under this section.

Maximum penalty—200 penalty units.

(2) The real estate agent must give the statement to the proposed buyer before the buyer signs any contract in relation to the sale.

(3) The statement must include the following particulars—

(a) the business, clearly identified, to which the statement relates;

(b) the names and addresses of the seller of the business and the proposed buyer;

(c) a clear statement that, to carry on the business, the proposed buyer must have the approval of the body corporate of the building complex in which the activities of a resident letting agent are to be performed;

(d) a clear statement that a person who performs the activities of a resident letting agent must—

(i) hold a resident letting agent's licence under this Act; or

(ii) otherwise be permitted under this or another Act to perform the activities;

(e) the date on which the statement is given.

(4) The statement must be signed and dated by the real estate agent.

(5) Also, when giving the statement to the proposed buyer, the real estate agent must ask the proposed buyer to acknowledge that the proposed buyer has read the statement by signing and dating it.

(6) The real estate agent must keep a copy of the signed statement at the real estate agent's registered office and make it available for the immediate inspection of an inspector who asks to see it.

Maximum penalty for subsection (6)—200 penalty units.

Division 8 Code of conduct

154 Code of conduct

A regulation may prescribe a code of conduct about real estate agency practice that may include the following—

(a) setting conduct standards for real estate agents, employed licensees and real estate salespersons;

(b) establishing principles for fair trading;

(c) providing for a system of complaint resolution.

155 Complaints about conduct

(1) A person aggrieved by the conduct of a real estate agent or real estate salesperson may complain in writing to the chief executive about the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action about the conduct allowed under this Act.

Note—

Breach of a code of conduct is a ground for starting disciplinary proceedings under section 496 (Grounds for starting disciplinary proceedings).

(3) The investigation may take place and action may be taken against a person who was a real estate agent or real estate salesperson even though the person is no longer a real estate agent or real estate salesperson.

Part 3 General

156 Registered office

A real estate agent's ***registered office*** is—

(a) for a real estate agent who is a principal licensee—

(i) the place the agent specifies in the agent's application for a real estate agent's licence as the agent's principal place of business; or

(ii) another place notified to the chief executive by the agent in the approved form as the agent's principal place of business; and

(b) for a real estate agent who is an employed licensee—

(i) the place the agent specifies in the licensee's application for a real estate agent's licence as the agent's business address; or

(ii) another place notified to the chief executive by the agent in the approved form as the agent's business address.

157 Real estate agent must notify chief executive of change in place of business etc.

(1) A real estate agent who is a principal licensee must—

(a) notify the chief executive in the approved form of any change in the agent's principal place of business within 14 days after the change; and

(b) notify the chief executive in the approved form of the closure of any place where the agent carries on business within 14 days after the closure; and

(c) notify the chief executive in the approved form of the opening of any place where the agent carries on business within 14 days after the opening.

Maximum penalty—200 penalty units.

(2) A real estate agent who is an employed licensee must notify the chief executive in the approved form of any change in the agent's business address within 14 days after the change.

Maximum penalty—200 penalty units.

158 Display and publication of licensee's name

(1) A real estate agent who is a principal licensee must display at each place the agent carries on business, in the way that may be prescribed under a regulation—

(a) the agent's name; and

(b) if the agent is not the person in charge of the agent's business at the place, the name of the real estate agent who is in charge at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(2) A real estate agent who is a principal licensee must not publish, or permit to be published, in a newspaper or elsewhere an advertisement for the agent's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

159 Principal licensee must keep employment register

(1) A real estate agent who is a principal licensee must keep a register (***employment register***) at each place where the agent carries on business.

Maximum penalty—200 penalty units.

(2) The real estate agent must enter, and keep entered, in the employment register—

(a) the name, and the other particulars that may be prescribed under a regulation, of each person (***employee***) who is employed as an employed licensee, real estate salesperson or trainee auctioneer at the place; and

(b) if the employee is a real estate salesperson or trainee auctioneer, the activities the salesperson is authorised to perform for the agent or the trainee is authorised to perform under the supervision of an auctioneer during the employee's employment by the agent.

Maximum penalty—200 penalty units.

Note—

The real estate agent must give the employee a statement under section 130 (Real estate agent must give salespersons employment authority) clearly specifying the employee's activities.

(3) The real estate agent must—

(a) enter the particulars about each employee, and for each real estate salesperson or trainee auctioneer, the activities the salesperson or trainee is authorised to perform, immediately after the employee is employed at the place; and

(b) if there is a change in an employee's particulars or activities, correct the entry in the way prescribed under a regulation immediately after the change.

Maximum penalty—200 penalty units.

(4) The form of the register may be prescribed under a regulation.

Part 4 Offences

160 Acting as real estate agent

(1) A person must not, as an agent for someone else for reward, perform an activity that may be done under the authority of a real estate agent's licence unless the person—

(a) holds a real estate agent's licence and the performance of the activity is authorised under the person's licence; or

(b) is otherwise permitted under this or another Act to perform the activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A person must not act as a real estate agent unless—

(a) the person holds a real estate agent's licence and the act is done under the authority of the person's licence; or

(b) the act is otherwise permitted under this or another Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) Without limiting the ways a person may act as a real estate agent, a person acts as a real estate agent if the person—

(a) performs an activity mentioned in section 128(1);[54] or

(b) advertises or notifies or states that the person—

(i) performs an activity mentioned in section 128(1); or

(ii) is willing to perform an activity mentioned in section 128(1); or

(c) in any way holds out as being ready to perform an activity mentioned in section 128(1).

(4) However—

(a) a person does not act as a real estate agent only because the person, while performing duties as an employee of a real estate agent at the real estate agent's registered office or other place of business—

(i) collects, and issues receipts for, rents; or

(ii) gives a person a list, prepared by or for the real estate agent, of premises available for rent; or

(iii) does something of an administrative nature in relation to a thing the real estate agent does as a real estate agent; and

(b) a person does not act as a real estate agent only because the person collects rents for the service provider for a residential service, as an employee of the service

54 Section 128 (What a real estate agent's licence authorises)

provider, if the rents are collected in the course of the conduct of the service; and

(c) a lawyer does not act as a real estate agent only because the lawyer collects rents in the lawyer's practice if the lawyer complies with the requirements of the *Trust Accounts Act 1973* in relation to the rents; and

(d) a person does not act as a real estate agent only because the person sells, or negotiates the sale of, a manufactured home under an authority given to the person under the *Manufactured Homes (Residential Parks) Act 2003*, section 60.[55]

161 Pretending to be real estate salesperson

(1) A person must not act as a real estate salesperson unless the person holds a registration certificate (real estate salesperson).

Maximum penalty—200 penalty units.

(2) A person does not act as a real estate salesperson only because the person, while performing duties as an employee of a real estate agent at the real estate agent's registered office or other place of business—

(a) collects, and issues receipts for, rents; or

(b) gives a person a list, prepared by or for the real estate agent, of premises available for rent; or

(c) does something of an administrative nature in relation to a thing the real estate agent does as a real estate agent.

(3) In this section—

act as a real estate salesperson, for a person, includes hold out that the person is a real estate salesperson.

162 Real estate agent must not act for more than 1 party

(1) A real estate agent must not act for more than 1 party to a transaction.

55 *Manufactured Homes (Residential Parks) Act 2003*, section 60 (Appointing park owner under selling authority)

Maximum penalty—200 penalty units.

(2) If a real estate agent acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made.

(3) A real estate agent does not contravene subsection (1) and subsection (2) does not apply if the transaction is a livestock sale.

(4) Also, if the transaction is an exchange of property, a real estate agent does not contravene subsection (1) and subsection (2) does not apply to the extent that the agent acts for each of the parties to the transaction.

163 Production of licence or registration certificate

(1) A real estate agent must, if asked by a person with whom the agent is dealing, produce the agent's licence for inspection by the person.

Maximum penalty—100 penalty units.

(2) A real estate salesperson must, if asked by a person with whom the salesperson is dealing, produce the salesperson's registration certificate for inspection by the person.

Maximum penalty—100 penalty units.

164 Employment of persons in real estate business

(1) A real estate agent must not employ, as a real estate salesperson, a person the agent knows, or ought to know, does not hold a registration certificate as a real estate salesperson.

Maximum penalty—200 penalty units.

(2) A principal licensee who is an individual and carries on the business of a real estate agent must not employ, as a real estate salesperson for the business, himself or herself or another individual with whom the principal licensee carries on business as a real estate agent.

Maximum penalty—200 penalty units.

(3) A principal licensee that is a corporation and carries on business as a real estate agent must not employ an executive

officer of the corporation as a real estate salesperson for the business.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[56]—200 penalty units; or

(b) for a corporation—1000 penalty units.

Chapter 6 Pastoral houses

Part 1 Pastoral house's authorisation and responsibilities

Division 1 Pastoral house licences

165 What a pastoral house licence authorises

(1) A pastoral house licence authorises the holder of the licence (***pastoral house***) to perform the following activities as an agent for others for reward—

(a) the activities of a real estate agent restricted to the sale of rural land and livestock;

(b) the activities of an auctioneer restricted to—

(i) auctioning rural land, livestock and wool; and

(ii) conducting not more than 4 auctions each year of land, that is not rural land, for each place of business of the pastoral house in each year; and

(iii) auctioning plant, machinery, furniture and other items situated on rural land.

56 Section 591 (Executive officers must ensure corporation complies with Act)

(2) A pastoral house may perform the activities in the carrying on of a business alone or with another pastoral house, real estate agent or auctioneer.

(3) However, if the pastoral house is carrying on business with a real estate agent or auctioneer, chapter 12[57] applies to a transaction entered into for the business as if the transaction had been entered into by a real estate agent or auctioneer acting alone.

166 What a pastoral house director's licence authorises

(1) A pastoral house director's licence authorises the holder of the licence (***pastoral house director***) to act for a pastoral house in its performance of the activities of a real estate agent restricted to the sale of rural land and livestock.

(2) The chief executive must, by condition of the licence, limit the performance of the pastoral house director's activities to a stated pastoral house.

167 What a pastoral house manager's licence authorises

(1) A pastoral house manager's licence authorises the holder of the licence (***pastoral house manager***)—

(a) to manage a pastoral house's business at a place, other than its principal place of business;

(b) to act for a pastoral house in its performance of the activities of a real estate agent restricted to the sale of rural land and livestock.

(2) The chief executive must, by condition of the licence, limit the pastoral house manager's activities to a stated pastoral house.

168 What a pastoral house auctioneer's licence authorises

(1) A pastoral house auctioneer's licence authorises the holder of the licence (***pastoral house auctioneer***) to act for a pastoral

57 Chapter 12 (Accounts and funds)

house in its performance of the activities of an auctioneer for a pastoral house.

(2) The chief executive must, by condition of the licence, limit the pastoral house auctioneer's activities to a stated pastoral house.

Division 2 Responsibility of persons in charge of a licensee's business for salespersons

169 Responsibility for acts and omissions of pastoral house salespersons

(1) A pastoral house must take reasonable steps to ensure each pastoral house salesperson employed by the pastoral house is properly supervised, acts only within the scope of the salesperson's employment authority under section 170 and complies with this Act.

(2) A pastoral house manager in charge of a pastoral house's business at a place must take reasonable steps to ensure each pastoral house salesperson employed at the place is properly supervised, acts only within the scope of the salesperson's employment authority under section 170 and complies with this Act.

(3) A pastoral house or pastoral house manager who fails to comply with subsection (1) or (2) is liable to disciplinary action under chapter 14, part 3.[58]

170 Pastoral house must give salespersons employment authority

Immediately after a pastoral house starts to employ a pastoral house salesperson, the pastoral house must give the salesperson a statement (***employment authority***) clearly specifying the activities of a pastoral house the pastoral house

58 Chapter 14 (Claims against the fund and other proceedings), part 3 (Disciplinary proceedings)

authorises the salesperson to perform for the pastoral house during the salesperson's employment by the pastoral house.

Maximum penalty—200 penalty units.

Part 2 Conduct provisions

Division 1 Carrying on business

171 Carrying on of business under pastoral house licence

A pastoral house must not carry on the business of a pastoral house with another person unless the person is—

(a) another pastoral house; or

(b) a real estate agent; or

(c) an auctioneer.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[59]—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

172 Licensee to be in charge of pastoral house's business at a place

(1) A pastoral house must ensure that—

(a) the individual in charge of the pastoral house's business at the pastoral house's registered office[60] is a pastoral house director; and

(b) if the pastoral house has more than 1 place of business, at each other place of business an individual who is a

59 Section 591 (Executive officers must ensure corporation complies with Act)

60 See section 193(1) (Registered offices).

pastoral house director, pastoral house manager or real estate agent is in charge of the pastoral house's business at the place.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[61]—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

(2) An individual must not be in charge of a pastoral house's business at more than 1 place.

Maximum penalty—200 penalty units.

(3) It is not an offence against subsection (1) or (2) for an individual who is a pastoral house director, pastoral house manager or real estate agent to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.

(4) For subsection (3), land is ***contiguous*** with other land only if the parcels of land have a common boundary that is not separated by a public road.

Division 2 Appointment

173 Appointment of pastoral house—general

(1) A pastoral house must not act as a pastoral house for a person (***client***) to perform an activity (***service***) for the client unless—

(a) the client first appoints the pastoral house in writing under this section; or

(b) a previous appointment by the client is assigned to the pastoral house under the terms of that appointment or under section 175A and the appointment is in force.

61 Section 591 (Executive officers must ensure corporation complies with Act)

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

(2) The appointment may be for the performance of—

(a) a particular service (***single appointment***); or

(b) a number of services over a period (***continuing appointment***).

(3) The appointment must, for each service—

(a) state the service to be performed by the pastoral house and how it is to be performed; and

(b) state, in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to any amount that may be prescribed under a regulation; and

(c) state—

(i) the fees, charges and any commission payable for the service; and

(ii) the expenses, including advertising and travelling expenses, the pastoral house is authorised to incur in connection with the performance of each service or category of service; and

(iii) the source and the estimated amount or value of any rebate, discount, commission or benefit that the pastoral house may receive in relation to any expenses the pastoral house is authorised to incur in connection with the performance of the service; and

(iv) any condition, limitation or restriction on the performance of the service; and

(d) state when the fees, charges and any commission for the service become payable; and

(e) if the service to be performed is the sale of property and commission is payable in relation to the service and

expressed as a percentage of an estimated sale price, state that the commission is worked out only on the actual sale price; and

(f) if the appointment is for a sole or exclusive agency, state the date the appointment ends.

(4) A continuing appointment must state—

(a) the date the appointment ends; and

(b) that the appointment, other than to the extent it relates to the sale of land or interests in land, may be revoked on the giving of 90 days notice, or some lesser period (not less than 30 days) agreed by the parties.

(5) The notice revoking a continuing appointment must be by signed writing given to the other party.

(6) The appointment must be signed and dated by the client and the pastoral house or someone authorised or apparently authorised to sign for the pastoral house.

(7) The pastoral house must give a copy of the signed appointment to the client.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

(8) If an appointment under this section authorises a sale by auction, an appointment under section 210[62] is not required.

(9) This section does not apply if the service to be performed is the sale of livestock.

174 Form of appointment

(1) The appointment must be in the approved form.

62 Section 210 (Appointment of auctioneer—general)

(2) The approved form must include a prominent statement that the client should seek independent legal advice before signing the appointment.

(3) An appointment that does not comply with subsection (1) is ineffective from the time it is made.

174A Pre-appointment advice about types of appointment

If the appointment is for the sale of a place of residence or land or an interest in a place of residence or land, before the appointment is signed, the pastoral house must specifically bring to the client's notice the information in the form of appointment about—

(a) the effect of the following—

(i) an open listing;[63]

(ii) an exclusive agency;[64]

(iii) a sole agency;[65] and

(b) the difference between sole agency and exclusive agency.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[66]—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

Note—

The commission of an offence against this section also renders the appointment ineffective under section 177(3).

63 See section 16 (Meaning of *open listing*).

64 See section 19(2) (Difference between *exclusive agency* and *sole agency*).

65 See section 19(3) (Difference between *exclusive agency* and *sole agency*).

66 Section 591 (Executive officers must ensure corporation complies with Act)

175 Appointment of pastoral house—sole and exclusive agencies

(1) If the appointment is for a sole or exclusive agency, before the appointment is signed, the pastoral house must discuss with the client whether the appointment is to be for a sole agency or an exclusive agency and specifically bring to the client's notice the information in the form of appointment about—

(a) the proposed term of the appointment; and

(b) if the appointment is for the sale of residential property, the client's entitlement to negotiate the term of the appointment up to a maximum term of 60 days; and

(c) the difference between sole agency and exclusive agency, unless the information has been brought to the client's notice under section 174A; and

(d) the consequences for the client if the property is sold by someone other than the agent during the term of the appointment.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

Note—

The commission of an offence against this subsection also renders an appointment for the sale of a place of residence or land or an interest in a place of residence or land ineffective under section 177(3).

(2) The appointment may include provision that, at the end of the term of a sole or exclusive agency, the appointment of the pastoral house continues under an open listing[67] that may be ended at any time by either party.

(3) Subsection (1)(b) does not apply if the appointment is for the sale of 3 or more residential properties.

67 See section 16 (Meaning of *open listing*).

175A Proposal for assignment of appointments

(1) This section applies if a pastoral house that holds appointments from clients to perform services for the clients under section 173 proposes to assign the appointments to another pastoral house (***proposed assignee***) without changing the terms of the appointment.

(2) However, this section does not apply to the assignment of an appointment if—

(a) the terms of the appointment authorise the assignment of the appointment; and

(b) the assignment is made in accordance with the terms of the appointment.

(3) At least 14 days before the pastoral house assigns the appointments, the pastoral house must give each client written notice of the proposed assignment.

(4) The notice must state the following—

(a) the proposed assignee's name;

(b) the appointments are to be assigned without changing the terms of the appointment;

(c) the client may agree or refuse to agree to the proposed assignment;

(d) when the proposed assignment is to take effect.

(5) If the client agrees to the assignment and the pastoral house assigns the appointment under this section, the appointment is taken, for section 173, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

176 Restriction on reappointment of pastoral house for sales of residential property

(1) A pastoral house may be reappointed for a sole or exclusive agency for the sale of residential property for 1 or more terms of not more than 60 days.

(2) The limitation on the term of reappointment under subsection (1) does not apply if the reappointment is for the sale of 3 or more residential properties.

(3) A pastoral house appointed for the sale of residential property under a sole or exclusive agency commits an offence if the pastoral house is reappointed for the sale earlier than 14 days before the term of the sole or exclusive agency ends.

Maximum penalty for subsection (3)—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[68]—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

Note—

The commission of an offence against this subsection in relation to the reappointment also renders the reappointment ineffective under section 177.

176A Form of reappointment

(1) The reappointment of a pastoral house under section 176 must be made in the approved form.

(2) A reappointment that does not comply with subsection (1) is ineffective from the time it is made.

177 When appointments and reappointments are ineffective

(1) The appointment of a pastoral house for a sole or exclusive agency for the sale of residential property is ineffective from the time it is made if the term of the appointment is more than 60 days.

(2) Subsection (1) does not apply if the appointment is for the sale of 3 or more residential properties.

(3) The appointment of a pastoral house for the sale of a place of residence or land or an interest in a place of residence or land is ineffective from the time it is made if the pastoral house commits an offence against section 174A or 175(1).

(4) The reappointment of a pastoral house for a further term of sole or exclusive agency for the sale of residential property is ineffective from the time it is made if the pastoral house

68 Section 591 (Executive officers must ensure corporation complies with Act)

commits an offence against section 176(3) in relation to the reappointment.

Division 3 Recovery of reward or expense

178 Commission may be claimed only in relation to actual amounts

(1) This section applies to a pastoral house that performs, for the payment of a commission, a service of selling property.

(2) The pastoral house must not claim commission worked out on an amount more than the actual sale price of the property.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

179 Restriction on recovery of reward or expense—no proper authorisation etc.

(1) A person is not entitled to sue for, or recover or retain, a reward or expense for the performance of an activity as a pastoral house unless, at the time the activity was performed, the person—

(a) held a pastoral house licence; and

(b) was authorised under the person's licence to perform the activity; and

(c) had been properly appointed under division 2[69] by the person to be charged with the reward or expense.

(2) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a pastoral house other than as provided by subsection (1) commits an offence.

Maximum penalty for subsection (2)—

69 Division 2 (Appointment)

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

180 Restriction on recovery of reward or expense above amount allowed

(1) A person is not entitled to sue for, or recover or retain, a reward for the performance of an activity as a pastoral house that is more than the amount of the reward stated in the appointment given under section 173.[70]

(2) However, if the reward for the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or retain, a reward more than the amount allowed under the regulation.

(3) A person is not entitled to sue for, or recover or retain, expenses for the performance of an activity as a pastoral house that are more than the amount of the expenses stated in the appointment given under section 173 and actually expended.

(4) However, if the amount of expenses that may be incurred in relation to the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or retain, an amount more than the amount allowed under the regulation.

(5) Subsection (2) does not prevent the person suing for, recovering or retaining, in addition to the amount allowed under a regulation for the reward, an amount for GST payable for a supply.

(6) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a pastoral house other than as provided by this section commits an offence.

Maximum penalty for subsection (6)—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty

70 Section 173 (Appointment of pastoral house—general)

units; or

(b) for a pastoral house—1000 penalty units.

181 Excess commission etc. to be repaid

(1) This section applies if—

(a) a person is convicted of an offence against section 178(2), 179(2) or 180(6); and

(b) the court before whom the person is convicted is satisfied on the balance of probabilities the person, in connection with the offence, has recovered or retained from someone (***client***) for whom the person performed an activity an amount to which the person was not entitled.

(2) The court must order the person to pay the amount to the client.

(3) The order must be made whether or not any penalty is imposed on the conviction.

(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as a judgment of that court.

Division 4 Interests in property

182 Definition for div 4

In this division—

obtain includes being in any way concerned in obtaining.

183 Beneficial interest—options

(1) This section applies to property placed by a person (***client***) with a pastoral house for sale.

(2) The pastoral house commits an offence if the pastoral house obtains from the client an option to purchase the property in which the pastoral house has a beneficial interest.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[71]—200 penalty units or 3 years imprisonment; or

(b) for a pastoral house—1000 penalty units.

(3) A pastoral house officer of the pastoral house commits an offence if the officer obtains from the client an option to purchase the property in which the officer has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) A pastoral house must not sell the property if the pastoral house obtains a beneficial interest in an option to purchase the property.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units or 3 years imprisonment; or

(b) for a pastoral house—1000 penalty units.

184 Beneficial interest—other than options

(1) This section applies to property placed by a person (***client***) with a pastoral house for sale, but does not apply if section 183 applies.

(2) The pastoral house commits an offence if the pastoral house obtains a beneficial interest in the property.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units or 3 years imprisonment; or

71 Section 591 (Executive officers must ensure corporation complies with Act)

(b) for a pastoral house—1000 penalty units.

(3) A pastoral house officer of the pastoral house commits an offence if the officer obtains a beneficial interest in the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) A person does not contravene subsection (2) or (3) if—

(a) the person—

(i) before a contract for the sale of the property is entered into, obtains the client's written acknowledgment in the approved form that the client—

(A) is aware that the person is interested in obtaining a beneficial interest in the property; and

(B) consents to the person obtaining the interest; and

(ii) acts fairly and honestly in relation to the sale; and

(b) no commission or other reward is payable in relation to the sale; and

(c) the client is in substantially as good a position as the client would be if the property were sold at fair market value.

184A Return of beneficial interest if in form of commission

(1) This section applies if—

(a) a person is convicted of an offence against section 184(2) or (3); and

(b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (***client***) for whom the person performed an

activity an amount of commission to which the person was not entitled.

(2) The court must order the person to pay the amount to the client.

(3) The order must be made whether or not any penalty is imposed on the conviction.

(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

185 Non-application of s 184 for particular livestock sales

Section 184 does not apply in relation to livestock sales if the pastoral house obtains the client's written acknowledgment that the client—

(a) is aware that the pastoral house or pastoral house officer is interested in obtaining a beneficial interest in the livestock; and

(b) consents to the pastoral house, pastoral house officer or associate of the officer obtaining the interest.

Division 5 Lands not lawfully useable for residential purposes

186 Definition for div 5

In this division—

vacant land means land on which there are no structural improvements, other than fencing.

187 Application of div 5

This division applies to a sale or proposed sale of vacant land if—

(a) the sale is by a pastoral house either as agent for another or as principal; and

(b) the land is within—

(i) the City of Brisbane area; or

(ii) a local government area or joint local government area under the *Local Government Act 1993*; and

(c) the land can not, as at the day of sale, be lawfully used for residential purposes.

188 Notice to be given about vacant land

(1) The pastoral house must give to a proposed buyer a written statement under this section.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[72]—200 penalty units or 2 years imprisonment; or

(b) for a pastoral house—1000 penalty units.

(2) The pastoral house must give the statement to the proposed buyer before the buyer signs any contract for the sale.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units or 2 years imprisonment; or

(b) for a pastoral house—1000 penalty units.

(3) The statement must include the following particulars—

(a) the land, clearly identified (including by lot-on-plan, or similar, description), to which the statement relates;

(b) the names and addresses of the seller of the land and the proposed buyer;

(c) a clear statement that the use of the land for residential purposes is unlawful;

(d) a clear statement that if the buyer erects on the land a place of residence or otherwise uses the land for residential purposes contrary to law—

72 Section 591 (Executive officers must ensure corporation complies with Act)

(i) the buyer may commit an offence; and

(ii) a named local government may be lawfully empowered to demolish the place of residence or other residential structure;

(e) the date on which the statement is given.

(4) The statement must be signed and dated by someone authorised by the pastoral house to sign the statement and the proposed buyer.

(5) The pastoral house must—

(a) keep a copy of the signed statement at the place of business of the pastoral house where dealings with the proposed buyer were conducted; and

(b) make it available for immediate inspection by an inspector who asks to see it.

Maximum penalty for subsection (5)—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units or 2 years imprisonment; or

(b) for a pastoral house—1000 penalty units.

189 Buyer's rights if notice not given or materially defective

(1) A buyer of land, by written notice (***avoidance notice***) given to the seller or pastoral house, may avoid a contract for the sale of the land if—

(a) the buyer has not been given the notice under section 188; or

(b) the notice has been given to the buyer, but the notice is defective in a material way.

(2) The avoidance notice must be given to the seller or pastoral house within 6 months after the day the buyer entered into the contract.

(3) If the contract is avoided by the buyer under subsection (1), the seller and the pastoral house are liable at law to the buyer for all amounts paid by the buyer—

(a) under the contract; and

(b) for legal and other expenses in relation to the contract after the contract was signed.

(4) A pastoral house that is liable at law under subsection (3) for the repayment to the buyer of an amount paid by the buyer under the contract must repay the amount within 14 days after becoming liable.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

(5) The buyer may recover an amount mentioned in subsection (3) as a debt.

(6) Judgment recovered against either person liable under subsection (3) for an amount repayable under that subsection does not bar an action against the other person.

(7) However, if separate actions are brought—

(a) the amounts recoverable under the judgments given in the actions must not be more, taken together, than the amount repayable to the buyer; and

(b) in the later of the 2 actions, the plaintiff is not entitled to costs unless the court decides there were reasonable grounds for bringing the action.

(8) If the buyer avoids the contract under this section after the contract is completed, the buyer must, after repayment of all amounts recoverable by the buyer under subsection (3)—

(a) sign the documents presented to the buyer necessary to convey title to the land to the person lawfully entitled to the land or the person's nominee; and

(b) deliver to the person lawfully entitled to the land or the person's nominee any instrument of title in the buyer's possession or under the buyer's control.

(9) The buyer—

(a) is not liable for any costs associated with a conveyance under subsection (8); and

(b) may recover from the seller and the pastoral house as a debt the buyer's reasonable costs associated with the conveyance.

(10) The liability of the seller and the pastoral house under subsections (3) and (9) is joint and several.

190 Liability to punishment under s 188 or 189 additional to other liabilities at law

Liability to punishment under section 188 or 189 is in addition to other liabilities at law imposed under section 189.

Division 6 Code of conduct

191 Code of conduct

A regulation may prescribe a code of conduct for pastoral houses that may include the following—

(a) setting conduct standards for pastoral houses, employed licensees and pastoral house officers;

(b) establishing principles for fair trading;

(c) providing for a system of complaint resolution.

192 Complaints about conduct

(1) A person aggrieved by the conduct of a pastoral house or pastoral house officer may complain in writing to the chief executive about the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action in relation to the conduct allowed under this Act.

Note—

Breach of a code of conduct is a ground for starting disciplinary proceedings under section 496 (Grounds for starting disciplinary proceedings).

(3) The investigation may take place and action may be taken against a person who was a pastoral house officer even though the person is no longer a pastoral house officer.

Part 3 General

193 Registered offices

(1) A pastoral house's ***registered office*** is—

(a) the place the pastoral house specifies in its application for a pastoral house licence as its principal place of business; or

(b) another place notified to the chief executive by the pastoral house in the approved form as its principal place of business.

(2) A pastoral house director's ***registered office*** is—

(a) the place the pastoral house director specifies in the director's application for a pastoral house director's licence as the director's business address; or

(b) another place notified to the chief executive by the pastoral house director in the approved form as the director's business address.

(3) A pastoral house manager's ***registered office*** is—

(a) the place the pastoral house manager specifies in the manager's application for a pastoral house manager's licence as the manager's business address; or

(b) another place notified to the chief executive by the pastoral house manager in the approved form as the manager's business address.

(4) A pastoral house auctioneer's ***registered office*** is—

(a) the place the pastoral house auctioneer specifies in the auctioneer's application for a pastoral house auctioneer's licence as the auctioneer's business address; or

(b) another place notified to the chief executive by the pastoral house auctioneer in the approved form as the auctioneer's business address.

194 Pastoral house etc. must notify chief executive of particular changes

(1) A pastoral house must—

(a) notify the chief executive in the approved form of any change in the pastoral house's principal place of business within 14 days after the change; and

(b) notify the chief executive in the approved form of the closure of any place where the pastoral house carries on business within 14 days after the closure; and

(c) notify the chief executive in the approved form of the opening of any place where the pastoral house carries on business within 14 days after the opening.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

(2) A pastoral house director, manager or auctioneer must notify the chief executive in the approved form of any change in the director's, manager's or auctioneer's business address within 14 days after the change.

Maximum penalty—200 penalty units.

(3) A pastoral house must notify the chief executive in the approved form of the name of a pastoral house director who stops being a director of the pastoral house within 14 days after the person stops being a director.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

(4) A pastoral house must notify the chief executive in the approved form of the name of a pastoral house manager or auctioneer who stops being an employee of the pastoral house within 14 days after the person stops being an employee.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

195 Display and publication of licensee's name

(1) A pastoral house must display at each place the pastoral house carries on business, in the way that may be prescribed under a regulation—

(a) the pastoral house's name; and

(b) the name of the individual in charge of the pastoral house's business at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[73]—100 penalty units; or

(b) for a pastoral house—500 penalty units.

(2) A pastoral house must not publish in a newspaper or elsewhere an advertisement for the pastoral house's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—100 penalty

73 Section 591 (Executive officers must ensure corporation complies with Act)

units; or

(b) for a pastoral house—500 penalty units.

196 Pastoral house to keep employment register

(1) A pastoral house must keep a register (***employment register***) at each place where the pastoral house carries on business.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

(2) The pastoral house must enter, and keep entered, in the employment register—

(a) the name, and the other particulars that may be prescribed under a regulation, of each person (***employee***) who is employed as an employed licensee or pastoral house salesperson at the place; and

(b) if the employee is a pastoral house salesperson, the activities the salesperson is authorised to perform for the pastoral house during the salesperson's employment by the pastoral house.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

Note—

The pastoral house must give the salesperson a statement under section 170 (Pastoral house must give salespersons employment authority) clearly specifying the salesperson's activities.

(3) The pastoral house must—

(a) enter the particulars about each employee, and for each pastoral house salesperson, the activities the salesperson is authorised to perform, immediately after the employee is employed at the place; and

(b) if there is a change in an employee's particulars or activities, correct the entry in the way prescribed under a regulation immediately after the change.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

(4) The form of the register may be prescribed under a regulation.

Part 4 Offences

197 Acting as pastoral house

(1) A person must not, as an agent for someone else for reward, perform an activity that may be done under the authority of a pastoral house licence unless the person—

(a) holds a pastoral house licence and the performance of the activity is authorised under the person's licence; or

(b) is otherwise permitted under this or another Act to perform the activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A person must not act as a pastoral house unless—

(a) the person holds a pastoral house licence and the act is done under the authority of the person's licence; or

(b) the act is otherwise permitted under this or another Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) Without limiting the ways a person may act as a pastoral house, a person ***acts*** as a pastoral house if the person—

(a) performs an activity mentioned in section 165(1);[74] or

(b) advertises, notifies or states that the person—

(i) performs an activity mentioned in section 165(1); or

(ii) is willing to perform an activity mentioned in section 165(1); or

(c) in any way holds out as being ready to perform an activity mentioned in section 165(1).

198 Acting as pastoral house director

A person must not, as an agent for someone else for reward, perform an activity that may be done under the authority of a pastoral house director's licence unless the person—

(a) holds a pastoral house director's licence and the performance of the activity is authorised under the person's licence; or

(b) is otherwise permitted under this or another Act to perform the activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

199 Acting as pastoral house manager

A person must not, as an agent for someone else for reward, perform an activity that may be done under the authority of a pastoral house manager's licence unless the person—

(a) holds a pastoral house manager's licence and the performance of the activity is authorised under the person's licence; or

(b) is otherwise permitted under this or another Act to perform the activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

74 Section 165 (What a pastoral house licence authorises)

200 Acting as pastoral house auctioneer

A person must not perform an activity that may be done under the authority of a pastoral house auctioneer's licence unless the person—

(a) holds a pastoral house auctioneer's licence and the performance of the activity is authorised under the person's licence; or

(b) is otherwise permitted under this or another Act to perform the activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

201 Pretending to be pastoral house salesperson

(1) A person must not act as a pastoral house salesperson unless the person holds a registration certificate as a pastoral house salesperson.

Maximum penalty—200 penalty units.

(2) In this section—

act as a pastoral house salesperson, for a person, includes hold out that the person is a pastoral house salesperson.

202 Pastoral house must not act for more than 1 party

(1) A pastoral house must not act for more than 1 party to a transaction.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[75]—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

(2) If a pastoral house acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made.

75 Section 591 (Executive officers must ensure corporation complies with Act)

(3) A pastoral house does not contravene subsection (1) and subsection (2) does not apply if the transaction is a livestock sale.

203 Production of licence or registration certificate

(1) A pastoral house officer must, if asked by a person with whom the officer is dealing, produce the officer's licence for inspection by the person.

Maximum penalty—100 penalty units.

(2) A pastoral house salesperson must, if asked by a person with whom the salesperson is dealing, produce the salesperson's registration certificate for inspection by the person.

Maximum penalty—100 penalty units.

(3) In this section—

pastoral house officer does not include a pastoral house salesperson.

204 Employment of persons in pastoral house business

(1) A pastoral house must not employ, as a pastoral house salesperson, a person the pastoral house knows, or ought to know, does not hold a registration certificate as a pastoral house salesperson.

Maximum penalty—200 penalty units.

(2) A pastoral house must not employ an executive officer of the pastoral house as a pastoral house salesperson for the pastoral house.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or

(b) for a pastoral house—1000 penalty units.

Chapter 7 Auctioneers

Part 1 Auctioneer's authorisation and responsibilities

Division 1 What an auctioneer's licence authorises

205 What an auctioneer's licence authorises

(1) An auctioneer's licence authorises the holder of the licence (***auctioneer***) to perform the activity of selling or attempting to sell or offering for sale or resale any property by way of auction.

(2) An auctioneer's licence also authorises the auctioneer to sell the property by any means during the auction period.

(3) An auctioneer may perform the activity—

(a) in the carrying on of a business, either alone or with others; or

(b) as an employee of—

(i) an auctioneer; or

(ii) a real estate agent; or

(iii) a pastoral house; or

(iv) a motor dealer.

(4) In this section—

auction period, for an auctioneer for the sale of property, means a period for which the auctioneer is appointed under section 210 or 212[76] or otherwise authorised or permitted under this or another Act to sell the property.

76 Section 210 (Appointment of auctioneer—general) or 212 (Appointment of auctioneer—sole and exclusive agencies)

Division 2 Responsibilities of auctioneers for trainee auctioneers

206 Responsibility for acts and omissions of trainee auctioneers

(1) An auctioneer must take reasonable steps to ensure each trainee auctioneer under the auctioneer's supervision and instruction is properly supervised and instructed, acts only within the scope of the trainee's employment authority under section 207 and complies with this Act.

(2) An auctioneer who fails to comply with subsection (1) is liable to disciplinary action under chapter 14, part 3.[77]

207 Auctioneer must give trainee auctioneer employment authority

Immediately after an auctioneer starts to supervise and instruct a trainee auctioneer, the auctioneer supervising and instructing the trainee must give the trainee a statement (***employment authority***) clearly specifying the activities of an auctioneer the trainee is authorised by the auctioneer to perform for the auctioneer during the trainee's period of training with the auctioneer.

Maximum penalty—200 penalty units.

77 Chapter 14 (Claims against the fund and other proceedings), part 3 (Disciplinary proceedings)

Part 2 Conduct provisions

Division 1 Carrying on business

208 Carrying on of business under auctioneer's licence

An individual who carries on the business of an auctioneer with others is not required to hold an auctioneer's licence if—

(a) at least 1 of the persons with whom the individual carries on business is an auctioneer; and

(b) the individual does not perform the activity of an auctioneer; and

(c) the individual is a suitable person to hold a licence.

209 Licensee to be in charge of auctioneer's business at a place

(1) An auctioneer who is an individual and a principal licensee must—

(a) be in charge of the auctioneer's business at the auctioneer's registered office;[78] and

(b) if the auctioneer has more than 1 place of business, ensure that at each other place of business an individual who is an auctioneer is in charge of the auctioneer's business at the place.

Maximum penalty—200 penalty units.

(2) An auctioneer that is a corporation and a principal licensee (***corporate auctioneer***) must ensure that—

(a) the individual in charge of the corporate auctioneer's business at its registered office is an auctioneer; and

(b) if the corporate auctioneer has more than 1 place of business, at each other place of business an individual

78 See section 250 (Registered office).

who is an auctioneer is in charge of the corporate auctioneer's business at the place.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[79]—200 penalty units; or

(b) for a corporation—1000 penalty units.

(3) An individual must not be in charge of an auctioneer's business at more than 1 place of business.

Maximum penalty—200 penalty units.

Division 2 Appointment

210 Appointment of auctioneer—general

(1) An auctioneer who is asked by a person (***client***) to perform an activity (***service***) for the client must not act for the client unless—

(a) the client first appoints the auctioneer in writing under this section; or

(b) a previous appointment by the client is assigned to the auctioneer under the terms of the appointment or under section 212A and the appointment is in force.

Maximum penalty—200 penalty units.

(2) The appointment may be for the performance of—

(a) a particular service (***single appointment***); or

(b) a number of services over a period (***continuing appointment***).

(3) The appointment must, for each service—

(a) state the service to be performed by the auctioneer and how it is to be performed; and

(b) state the day set for the auction; and

79 Section 591 (Executive officers must ensure corporation complies with Act)

(c) state, in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to any amount that may be prescribed under a regulation; and

(d) state—

(i) the fees, charges and any commission payable for the service; and

(ii) the expenses, including advertising, marketing and travelling expenses, the auctioneer is authorised to incur in connection with the performance of each service or category of service; and

(iii) the source and the estimated amount or value of any rebate, discount, commission or benefit that the auctioneer may receive in relation to any expenses the auctioneer is authorised to incur in connection with the performance of the service; and

(iv) any condition, limitation or restriction on the performance of the service; and

(e) state when the fees, charges and any commission for the service become payable; and

(f) if the service to be performed is the sale of property and commission is payable in relation to the service and expressed as a percentage of an estimated sale price, state that the commission is worked out only on the actual sale price; and

(g) if the appointment is for a sole or exclusive agency, state the date the appointment ends.

(4) A continuing appointment must state—

(a) the date the appointment ends; and

(b) that the appointment, other than to the extent it relates to the sale of land or interests in land, may be revoked on the giving of 90 days notice, or some lesser period (not less than 30 days) agreed by the parties.

(5) The notice revoking a continuing appointment must be by signed writing given to the other party.

(6) The appointment must be signed and dated by the client and the auctioneer or someone authorised or apparently authorised to sign for the auctioneer.

(7) The auctioneer must give a copy of the signed appointment to the client.

Maximum penalty—200 penalty units.

(8) This section does not apply if the service to be performed is the sale of livestock.

211 Form of appointment

(1) The appointment must be in the approved form.

(2) The approved form must include a prominent statement that the client should seek independent legal advice before signing the appointment.

(3) An appointment that does not comply with subsection (1) is ineffective from the time it is made.

211A Pre-appointment advice about types of appointment

If the appointment is for the sale of a place of residence or land or an interest in a place of residence or land, before the appointment is signed, the auctioneer must specifically bring to the client's notice the information in the form of appointment about—

(a) the effect of the following—

(i) an open listing;[80]

(ii) an exclusive agency;[81]

(iii) a sole agency;[82] and

(b) the difference between sole agency and exclusive agency.

Maximum penalty—200 penalty units.

80 See section 16 (Meaning of *open listing*).

81 See section 19(2) (Difference between *exclusive agency* and *sole agency*).

82 See section 19(3) (Difference between *exclusive agency* and *sole agency*).

Note—

The commission of an offence against this section also renders the appointment ineffective under section 214(3).

212 Appointment of auctioneer—sole and exclusive agencies

(1) If the appointment is for a sole or exclusive agency, before the appointment is signed, the auctioneer must discuss with the client whether the appointment is to be for a sole agency or an exclusive agency and specifically bring to the client's notice the information in the form of appointment about—

(a) the proposed term of the appointment; and

(b) if the appointment is for the sale of residential property, the client's entitlement to negotiate the term of the appointment up to a maximum term of 60 days; and

(c) the difference between sole agency and exclusive agency, unless the information has been brought to the client's notice under section 211A; and

(d) the consequences for the client if the property is sold by someone other than the auctioneer during the term of the sole or exclusive agency.

Maximum penalty—200 penalty units.

Note—

The commission of an offence against this subsection also renders an appointment for the sale of a place of residence or land or an interest in a place of residence or land ineffective under section 214(3).

(2) The auctioneer's requirement to give the notice under this section is in addition to the auctioneer's requirement to obtain an appointment under section 210.

(3) Subsection (1)(b) does not apply if the appointment is for the sale of 3 or more residential properties.

212A Proposal for assignment of appointments

(1) This section applies if an auctioneer who holds appointments from clients to perform services for the clients under section 210 proposes to assign the appointments to another auctioneer

(***proposed assignee***) without changing the terms of the appointment.

(2) However, this section does not apply to the assignment of an appointment if—

(a) the terms of the appointment authorise the assignment of the appointment; and

(b) the assignment is made in accordance with the terms of the appointment.

(3) At least 14 days before the auctioneer assigns the appointments, the auctioneer must give each client written notice of the proposed assignment.

(4) The notice must state the following—

(a) the proposed assignee's name;

(b) that the appointments are to be assigned without changing the terms of the appointment;

(c) the client may agree or refuse to agree to the proposed assignment;

(d) when the proposed assignment is to take effect.

(5) If the client agrees to the assignment and the auctioneer assigns the appointment under this section, the appointment is taken, for section 210, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

213 Restriction on reappointment of auctioneers for sales of residential property

(1) An auctioneer may be reappointed for a sole or exclusive agency for the sale of residential property for 1 or more terms of not more than 60 days.

(2) The limitation on the term of reappointment under subsection (1) does not apply if the reappointment is for the sale of 3 or more residential properties.

(3) An auctioneer appointed for the sale of residential property under a sole or exclusive agency commits an offence if the

auctioneer is reappointed for the sale earlier than 14 days before the term of the sole or exclusive agency ends.

Maximum penalty for subsection (3)—200 penalty units.

Note—

The commission of an offence against this subsection in relation to the reappointment also renders the reappointment ineffective under section 214.

213A Form of reappointment

(1) The reappointment of an auctioneer under section 213 must be made in the approved form.

(2) A reappointment that does not comply with subsection (1) is ineffective from the time it is made.

214 When appointments and reappointments are ineffective

(1) The appointment of an auctioneer for a sole or exclusive agency for the sale of residential property is ineffective from the time it is made if the term of the appointment is more than 60 days.

(2) Subsection (1) does not apply if the appointment is for the sale of 3 or more residential properties.

(3) The appointment of an auctioneer for the sale of a place of residence or land or an interest in a place of residence or land is ineffective from the time it is made if the auctioneer commits an offence against section 211A or 212(1).

(4) The reappointment of an auctioneer for a further term of sole or exclusive agency for the sale of residential property is ineffective from the time it is made if the auctioneer commits an offence against section 213(3) in relation to the reappointment.

Division 3 Chattel auctions

215 Buyer's premium

(1) This section applies to an auction of chattels.

(2) An auctioneer must not charge the buyer of a chattel a buyer's premium unless—

(a) the auctioneer—

(i) before the auction, obtains the written consent of the owner of the chattel; and

(ii) discloses, in the way prescribed under a regulation, that a buyer's premium is payable on the purchase of the chattel; and

(b) the premium is not more than the amount prescribed or worked out under a regulation.

Maximum penalty—200 penalty units.

(3) The auctioneer does not act for the buyer of the chattel only because the auctioneer accepts a buyer's premium from the buyer.

(4) In this section—

buyer's premium means an amount, not more than an amount prescribed or worked out under a regulation, payable to the auctioneer by a buyer on the purchase of a chattel.

chattel does not include a leasehold interest in land.

owner, of a chattel, includes a person who is lawfully entitled to sell the chattel.

Division 4 Recovery of reward or expense

216 Commission may be claimed only in relation to actual amounts

(1) This section applies to an auctioneer who performs, for the payment of a commission, a service of selling property.

(2) The auctioneer must not claim commission worked out on an amount more than the actual sale price of the property.

Maximum penalty—200 penalty units.

217 Restriction on recovery of reward or expense—no proper authorisation etc.

(1) A person is not entitled to sue for, or recover or retain, a reward or expense for the performance of an activity as an auctioneer unless, at the time the activity was performed, the person—

(a) held an auctioneer's licence; and

(b) was authorised under the person's licence to perform the activity; and

(c) had been properly appointed under division 2[83] by the person to be charged with the reward or expense.

(2) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as an auctioneer other than as provided by subsection (1) commits an offence.

Maximum penalty for subsection (2)—200 penalty units.

218 Restriction on recovery of reward or expense above amount allowed

(1) A person is not entitled to sue for, or recover or retain, a reward for the performance of an activity as an auctioneer that is more than the amount of the reward stated in the appointment given under section 210.[84]

(2) However, if the reward for the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or retain, a reward more than the amount allowed under the regulation.

(3) A person is not entitled to sue for, or recover or retain, expenses for the performance of an activity as an auctioneer that are more than the amount of the expenses stated in the appointment given under section 210 and actually expended.

(4) However, if the amount of expenses that may be incurred in relation to the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or

83 Division 2 (Appointment)

84 Section 210 (Appointment of auctioneer—general)

retain, an amount more than the amount allowed under the regulation.

(5) Subsection (2) does not prevent the person suing for, recovering or retaining, in addition to the amount allowed under a regulation for the reward, an amount for GST payable for a supply.

(6) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as an auctioneer other than as provided by this section commits an offence.

Maximum penalty for subsection (6)—200 penalty units.

219 Excess commission etc. to be repaid

(1) This section applies if—

(a) a person is convicted of an offence against section 216(2), 217(2) or 218(6); and

(b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (***client***) for whom the person performed an activity an amount to which the person was not entitled.

(2) The court must order the person to pay the amount to the client.

(3) The order must be made whether or not any penalty is imposed on the conviction.

(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

Division 5 Interests in property

220 Definition for div 5

In this division—

obtain includes being in any way concerned in obtaining.

221 Beneficial interest—options

(1) This section applies to property placed by a person (***client***) with an auctioneer for sale.

(2) The auctioneer commits an offence if the auctioneer obtains from the client an option to purchase the property in which the auctioneer has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) A trainee auctioneer employed by the auctioneer or under the supervision and instruction of the auctioneer commits an offence if the trainee obtains from the client an option to purchase the property in which the trainee has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) An auctioneer must not sell property if the auctioneer obtains a beneficial interest in an option to purchase the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

222 Beneficial interest—other than options

(1) This section applies to property placed by a person (***client***) with an auctioneer for sale, but does not apply if section 221 applies.

(2) The auctioneer commits an offence if the auctioneer obtains a beneficial interest in the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) A trainee auctioneer employed by the auctioneer or under the supervision and instruction of the auctioneer commits an offence if the trainee obtains a beneficial interest in the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) A person does not contravene subsection (2) or (3) if—

(a) the person—

(i) before the earlier of the auction of the property or a contract for the sale of the property is entered into, obtains the client's written acknowledgment in the approved form that the client—

(A) is aware that the person is interested in obtaining a beneficial interest in the property; and

(B) consents to the person obtaining the interest; and

(ii) acts fairly and honestly in relation to the sale; and

(b) no commission or other reward is payable in relation to the sale; and

(c) the client is in substantially as good a position as the client would be if the property were sold for fair market value.

(5) If the auctioneer or trainee auctioneer has not obtained the acknowledgment mentioned in subsection (4)(a)(i) and the auctioneer or trainee knows, or ought to know, an associate of the auctioneer or trainee intends bidding at the auction, the auctioneer or trainee must, immediately before the auction—

(a) identify the associate to those present at the auction; and

(b) announce to those present that the person is an associate of the auctioneer or trainee and intends bidding at the auction.

(6) If the auctioneer or trainee auctioneer complies with subsection (5), the auctioneer or trainee is taken to have satisfied subsection (4)(a)(i).

222A Return of beneficial interest if in form of commission

(1) This section applies if—

(a) a person is convicted of an offence against section 222(2) or (3); and

(b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection

with the offence, has recovered or retained from someone (***client***) for whom the person performed an activity an amount of commission to which the person was not entitled.

(2) The court must order the person to pay the amount to the client.

(3) The order must be made whether or not any penalty is imposed on the conviction.

(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

223 Non-application of s 222 for particular livestock sales

Section 222 does not apply in relation to livestock sales if the auctioneer obtains the client's written acknowledgment that the client—

(a) is aware that the auctioneer or trainee auctioneer is interested in obtaining a beneficial interest in the livestock; and

(b) consents to the auctioneer or trainee obtaining the interest.

Division 6 Lands not lawfully useable for residential purposes

224 Definition for div 6

In this division—

vacant land means land on which there are no structural improvements, other than fencing.

225 Application of div 6

This division applies to a sale or proposed sale of vacant land if—

(a) the sale is by an auctioneer either as agent for another or as principal; and

(b) the land is within—

(i) the City of Brisbane area; or

(ii) a local government area or joint local government area under the *Local Government Act 1993*; and

(c) the land can not, as at the day of sale, be lawfully used for residential purposes.

226 Notice to be given about vacant land

(1) The auctioneer must, immediately before the auction, announce that the land can not, as at the day of auction, be lawfully used for residential purposes.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) The auctioneer must give to a proposed buyer a written statement under this section before the buyer signs any contract in relation to the sale.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) The statement must include the following particulars—

(a) the land, clearly identified (including by lot-on-plan, or similar, description), to which the statement relates;

(b) the names and addresses of the seller of the land and the proposed buyer;

(c) a clear statement that the use of the land for residential purposes is unlawful;

(d) a clear statement that if the buyer erects on the land a place of residence or otherwise uses the land for residential purposes contrary to law—

(i) the buyer may commit an offence; and

(ii) a named local government may be lawfully empowered to demolish the place of residence or other residential structure; and

(e) the date on which the statement is given.

(4) The statement must be signed and dated by the auctioneer and the proposed buyer.

(5) The auctioneer must—

(a) keep a copy of the signed statement at the auctioneer's place of business; and

(b) make it available for immediate inspection by an inspector who asks to see it.

Maximum penalty for subsection (5)—200 penalty units or 2 years imprisonment.

227 Buyer's rights if notice not given or materially defective

(1) A buyer of land, by written notice (***avoidance notice***) given to the seller of the land or the auctioneer, may avoid a contract for the sale of the land if—

(a) the buyer has not been given the notice under section 226; or

(b) the notice has been given to the buyer, but the notice is defective in a material way.

(2) The avoidance notice must be given to the seller or auctioneer within 6 months after the day the buyer entered into the contract.

(3) If the contract is avoided by the buyer under subsection (1), the seller and the auctioneer are liable at law to the buyer for all amounts paid by the buyer—

(a) under the contract; and

(b) for legal and other expenses in relation to the contract after the contract was signed.

(4) An auctioneer who is liable at law under subsection (3) for the repayment to the buyer of an amount paid by the buyer under the contract must repay the amount within 14 days after becoming liable.

Maximum penalty—200 penalty units.

(5) The buyer may recover an amount mentioned in subsection (3) as a debt.

(6) Judgment recovered against either person liable under subsection (3) for an amount repayable under that subsection does not bar an action against the other person.

(7) However, if separate actions are brought—

(a) the amounts recoverable under the judgments given in the actions must not be more, taken together, than the amount repayable to the buyer; and

(b) in the later of the 2 actions, the plaintiff is not entitled to costs unless the court decides there were reasonable grounds for bringing the action.

(8) If the buyer avoids the contract under this section after the contract is completed, the buyer must, after repayment of all amounts recoverable by the buyer under subsection (3)—

(a) sign the documents presented to the buyer necessary to convey title to the land to the person lawfully entitled to the land or the person's nominee; and

(b) deliver to the person lawfully entitled to the land or the person's nominee any instrument of title in the buyer's possession or under the buyer's control.

(9) The buyer—

(a) is not liable for any costs associated with a conveyance under subsection (8); and

(b) may recover from the seller and the auctioneer as a debt the buyer's reasonable costs associated with the conveyance.

(10) The liability of the seller and the auctioneer under subsections (3) and (9) is joint and several.

228 Liability to punishment under s 226 or 227 additional to other liabilities at law

Liability to punishment under section 226 or 227 is in addition to other liabilities at law imposed under section 227.

Division 7 Sales of livestock

229 Sales of livestock

(1) This section applies to sales of livestock by an auctioneer.

(2) The auctioneer may pay over the proceeds from the sale to the person (***client***) appointing the auctioneer to conduct the auction only if—

(a) the auctioneer—

(i) has known the client for at least 1 year; and

(ii) in the auctioneer's opinion, the client is a person of good repute; and

(iii) has no reason to believe the client is not lawfully entitled to sell the livestock; or

(b) the auctioneer receives a certificate for the client from a referee.

(3) A referee may give a certificate for the client only if the referee—

(a) has known the client for at least 1 year; and

(b) in the referee's opinion, the client is a person of good repute; and

(c) has no reason to believe the client is not lawfully entitled to sell the livestock.

(4) In this section—

referee means a person the auctioneer has known for at least 1 year who, in the auctioneer's opinion, is a person of good repute.

230 Protection for auctioneer

(1) This section applies if a court finds, in relation to livestock sold by an auctioneer, that the client was not lawfully entitled to sell the livestock.

(2) An auctioneer who, acting in good faith and without negligence, complies with section 229 is not liable to the

owner of the livestock only because the auctioneer took possession or gave delivery of the livestock.

Division 8 Code of conduct

231 Code of conduct

A regulation may prescribe a code of conduct about auctioneering practice that may include the following—

(a) setting conduct standards for auctioneers, employed licensees and trainee auctioneers;

(b) establishing principles for fair trading;

(c) providing for a system of complaint resolution.

232 Complaints about conduct

(1) A person aggrieved by the conduct of an auctioneer or trainee auctioneer may complain in writing to the chief executive about the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action in relation to the conduct allowed under this Act.

Note—

Breach of a code of conduct is a ground for starting disciplinary proceedings under section 496 (Grounds for starting disciplinary proceedings).

(3) The investigation may take place and action may be taken against a person who was an auctioneer or trainee auctioneer even though the person is no longer an auctioneer or trainee auctioneer.

Division 9 Sales of water damaged motor vehicles

232A Announcements before auction—water damaged motor vehicle

An auctioneer must announce, immediately before the auction of a water damaged motor vehicle, that the vehicle is a water damaged motor vehicle.

Maximum penalty—100 penalty units.

Division 10 Sales of written-off vehicles

232B Announcements before auction—written-off vehicle

(1) An auctioneer must announce, immediately before the auction of a motor vehicle that is an unregistered written-off vehicle, that the vehicle is a written-off vehicle and state—

(a) if the vehicle is a repairable write-off—that the vehicle is a repairable write-off and must pass a written-off vehicle inspection under a regulation under the *Transport Operations (Road Use Management) Act 1995* before it can be registered; or

(b) if the vehicle is a statutory write-off—that the vehicle can not be registered.

Maximum penalty—100 penalty units.

(2) An auctioneer does not contravene subsection (1) if—

(a) 2 or more written-off vehicles that are repairable write-offs are to be auctioned in consecutive lots; and

(b) immediately before the first vehicle is to be auctioned, the auctioneer—

(i) identifies the vehicles; and

(ii) announces that the identified vehicles are repairable write-offs and must pass a written-off vehicle inspection under a regulation under the

Transport Operations (Road Use Management) Act 1995 before they can be registered.

Part 3 Guarantee of title for motor vehicles

233 Guarantee of title for motor vehicles

(1) This section applies if a used motor vehicle is to be sold by an auctioneer (***selling agent***) at auction to someone else (***buyer***).

(2) The following person must ensure the buyer gains clear title to the motor vehicle at the time property in the vehicle passes to the buyer—

(a) if the selling agent owns the vehicle or is auctioning the vehicle for someone other than a motor dealer or another auctioneer—the selling agent;

(b) if the selling agent is auctioning the vehicle for a motor dealer or another auctioneer—the motor dealer or other auctioneer for whom the selling agent is auctioning the vehicle.

Maximum penalty—200 penalty units.

(3) In a proceeding for an offence against subsection (2), it is a defence for the defendant to prove that the defendant took all reasonable steps to ensure subsection (2) was complied with.

(4) The selling agent must, immediately after property in the vehicle passes to the buyer, give the buyer an approved form stating—

(a) particulars about the vehicle, including its odometer reading at the time property passes; and

(b) the responsible licensee guarantees the buyer gains clear title to the vehicle at the time property passes; and

(c) any other particulars that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(5) The selling agent must, within 48 hours after property in the vehicle passes to the buyer, give the buyer a security interest certificate for the vehicle issued after property in the vehicle passes.

Maximum penalty—200 penalty units.

(6) If the security interest certificate for the vehicle shows that a security interest is registered for the vehicle—

(a) the sale is ineffective from the time it is made; and

(b) the responsible licensee must do everything in the licensee's power to return the buyer to the position the buyer was in before the vehicle was purchased including, for example, by paying to the buyer—

(i) the amount the buyer paid for the vehicle; and

(ii) any amount the buyer paid for vehicle inspection, auctioneer's charges or stamp duty.

(7) An amount payable to the buyer under subsection (6)(b) may be recovered as a debt.

(8) The selling agent must ask the buyer to sign an approved form acknowledging receipt of the documents mentioned in subsection (4) and (5).

(9) The selling agent must—

(a) give the original of the form mentioned in subsection (4) to the buyer; and

(b) keep a copy of the form; and

(c) make the copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

(10) The selling agent may charge the buyer an amount for the provision of the security interest certificate not greater than the amount prescribed under a regulation.

(11) A selling agent who charges a buyer an amount for providing the security interest certificate that is more than the amount prescribed commits an offence.

Maximum penalty—200 penalty units.

(12) A proceeding against an auctioneer or motor dealer for an offence against this section does not affect any civil liability of any person, including the auctioneer or dealer, arising out of the same facts that constitute the offence.

(13) In this section—

responsible licensee means the licensee who, under subsection (2), must ensure that the buyer of a motor vehicle gains clear title to the vehicle.

Part 4 Statutory warranty

234 Definitions for pt 4

In this part—

auctioneer includes a person performing the activities of an auctioneer without a licence.

defect see section 235.

defect notice see section 244(1).

repair period see section 247(2).

statutory warranty means the warranty under section 242.

time of taking possession, in relation to a vehicle, means when the buyer of the vehicle takes possession of the vehicle under a contract for its purchase.

warrantor, of a warranted vehicle, see section 240.

warranty advice see section 246(2).

warranty period see section 236.

235 Meaning of *defect*

A warranted vehicle has a ***defect*** for this part if—

(a) a part of the vehicle does not perform its intended function; or

(b) a part of the vehicle has deteriorated to an extent where it can not be reasonably relied on to perform its intended function.

236 Meaning of *warranty period*

(1) Subject to subsection (3), the ***warranty period*** of a class A warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached—

(a) the vehicle travels 5000km since the time of taking possession;

(b) 5p.m. on—

(i) the day 3 months after the time of taking possession if that day—

(A) is not a Sunday or public holiday; and

(B) the warrantor's place of business is open for business; or

(ii) the first day, after the day 3 months after the time of taking possession, that—

(A) is not a Sunday or public holiday; and

(B) the warrantor's place of business is open for business.

(2) Subject to subsection (3), the ***warranty period*** of a class B warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached—

(a) the vehicle travels 1000km since the time of taking possession;

(b) 5p.m. on—

(i) the day 1 month after the time of taking possession if that day—

(A) is not a Sunday or public holiday; and

(B) the warrantor's place of business is open for business; or

(ii) the first day, after the day 1 month after the time of taking possession, that—

(A) is not a Sunday or public holiday; and

(B) the warrantor's place of business is open for business.

(3) The warranty period under subsection (1) or (2) is extended by 1 day for each day or part of a day the warranted vehicle is not in the possession of the buyer of the vehicle if—

(a) the buyer has complied with section 244;[85] and

(b) a defect in the vehicle is being repaired by, or at the direction of, the warrantor of the vehicle under the statutory warranty.

237 Application of pt 4

(1) This part applies to each warranted vehicle sold by an auctioneer as owner of the vehicle or on consignment for another auctioneer or a motor dealer.

(2) This part, other than sections 238, 238A and 239, does not apply to the sale of a motor vehicle by the auctioneer—

(a) to another auctioneer or a motor dealer; or

(b) on consignment for a person who is not an auctioneer or motor dealer.

238 Unwarranted and restorable vehicles to be identified when offered for sale

(1) An auctioneer may advertise or display for sale an unwarranted vehicle only if it is advertised or displayed for sale, in the way provided under a regulation, as a vehicle that does not have a statutory warranty.

Maximum penalty—100 penalty units.

(2) Also, an auctioneer may advertise or display for sale a restorable vehicle only if it is advertised or displayed for sale in the way prescribed under a regulation.

Maximum penalty—100 penalty units.

85 Section 244 (Buyer's obligations under statutory warranty)

(3) This section does not apply to an unwarranted vehicle that is a caravan, a commercial vehicle or a motorcycle.

238A Bidders to register for auction of restorable vehicles

(1) Before a restorable vehicle is offered for sale, an auctioneer must invite persons intending to bid for the vehicle when it is offered for sale to register as bidders (***registered bidders***) for the sale.

(2) The auctioneer must also inform potential bidders that by registering as a bidder, the person agrees to purchase the restorable vehicle on the condition that the person is taken to waive its statutory warranty when the contract for its purchase is entered into.

239 Announcements before auction

(1) An auctioneer must announce, immediately before the auction of any unwarranted vehicle, that the vehicle does not have a statutory warranty.

Maximum penalty—100 penalty units.

(2) An auctioneer does not contravene subsection (1) if—

(a) 2 or more vehicles that do not have a statutory warranty are to be auctioned in consecutive lots; and

(b) immediately before the first vehicle is to be auctioned, the auctioneer identifies the vehicles and announces that the identified vehicles do not have a statutory warranty.

Example—

Lots 10 to 25 are vehicles that do not have a statutory warranty. The auctioneer does not contravene subsection (1) if, immediately before the auction of lot 10, the auctioneer announces lots 10 to 25 are vehicles that do not have a statutory warranty.

(3) Also, an auctioneer must announce, immediately before the auction of any restorable vehicle—

(a) that the vehicle is a restorable vehicle because it is more than 20 years old and is for sale for restoration; and

(b) that it is a condition of the sale of a restorable vehicle that if the vehicle is sold, the registered bidder to whom it is sold is taken to waive the statutory warranty for the vehicle when the contract for its purchase is entered into; and

(c) that the auctioneer will not accept bids from a person who is not a registered bidder.

Maximum penalty—100 penalty units.

(4) An auctioneer does not contravene subsection (3) if—

(a) 2 or more restorable vehicles are to be auctioned in consecutive lots; and

(b) immediately before the first of the vehicles in the consecutive lots is to be auctioned, the auctioneer identifies the vehicles and announces that it is a condition of each of the sales that a registered bidder who purchases the vehicle is taken to waive its statutory warranty when the contract for its purchase is entered into.

239A Effect of sale of restorable vehicle to registered bidder

If a restorable vehicle is sold to a registered bidder at auction, the statutory warranty for the vehicle stops having effect when the contract for its purchase is entered into and the vehicle is taken, for section 241, to be an unwarranted vehicle.

240 Warrantor

For this part, the ***warrantor*** of a warranted vehicle is the auctioneer or motor dealer who owns the vehicle immediately before the time of taking possession.

Examples—

1 A, an auctioneer, sells a warranted vehicle owned by A at auction. A is the warrantor of the vehicle.

2 A, an auctioneer, sells a warranted vehicle owned by D, a motor dealer, at auction. D is the warrantor of the vehicle.

241 Auctioneer to give buyer notice about statutory warranty

(1) An auctioneer who sells a warranted vehicle must, immediately after the contract for its purchase is entered into, give the buyer of the vehicle a notice in the approved form.

Maximum penalty—100 penalty units.

(2) An auctioneer who sells an unwarranted vehicle or a restorable vehicle that is taken under section 239A to be an unwarranted vehicle must, immediately after the contract for its purchase is entered into, give the buyer of the vehicle notice in the approved form that the vehicle does not have a statutory warranty.

Maximum penalty—100 penalty units.

(3) The buyer must acknowledge receipt of a notice given under subsection (1) or (2) by signing a copy of it.

242 Statutory warranty

(1) The warrantor of a warranted vehicle warrants that—

(a) the vehicle is free from defects at the time of taking possession and for the warranty period;[86] and

(b) defects in the vehicle reported during the warranty period will be repaired by the warrantor free of charge.

(2) In this section—

defects does not include defects not covered by the statutory warranty.

243 Defects not covered by statutory warranty

The following defects in a warranted vehicle are not covered by the statutory warranty—

(a) a defect in the vehicle's paintwork or upholstery that should have been apparent on any reasonable inspection of the vehicle before the time of taking possession;

86 See also section 636 (Transitional provision about statutory warranty under former section 242 or 318).

(b) a defect after the time of taking possession—

(i) arising from or incidental to any accidental damage to the vehicle; or

(ii) arising from the buyer's misuse or negligence; or

(iii) in an accessory to the vehicle not fitted to the vehicle when sold to the buyer;

(c) a defect in something else prescribed by regulation.

244 Buyer's obligations under statutory warranty

(1) If the buyer of a warranted vehicle believes the vehicle has a defect the warrantor of the vehicle is obliged to repair under this part, the buyer must give the warrantor written notice of the defect (***defect notice***) before the end of the warranty period and—

(a) if the warranted vehicle is 200km or less from the warrantor's place of business when the defect notice is given, deliver the warranted vehicle to—

(i) the warrantor to repair the defect; or

(ii) a qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect; or

(b) if the warranted vehicle is more than 200km from the warrantor's place of business when the defect notice is given—

(i) deliver the warranted vehicle to the qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle and nearest to the vehicle to repair the defect; or

(ii) deliver, at the warrantor's expense, the warranted vehicle to another qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect.

(2) The buyer is taken to deliver the vehicle and the warrantor is taken to have possession of the vehicle if the buyer makes reasonable efforts to deliver the vehicle under this section but is unable to do so because the warrantor, or the qualified

repairer nominated by the warrantor, refuses to accept delivery of the vehicle.

(3) The place of delivery under subsection (1)(a)(ii) must not be more than 20km from the warrantor's place of business, unless the warrantor and the buyer otherwise agree.

(4) In this section—

qualified repairer, in relation to a warranted vehicle the subject of a defect notice, means a person who is, or holds the qualifications necessary to be appointed under the *Transport Operations (Road Use Management) Act 1995*, section 21[87] to be, an accredited person to perform vehicle safety inspections for the vehicle.

warrantor includes someone apparently working for the warrantor at the warrantor's place of business.

245 Warrantor to record particulars of extension of warranty period

The warrantor must keep a record, in the way prescribed under a regulation, of the day the warranted vehicle is delivered to the warrantor or nominated qualified repairer under section 244 and the day the vehicle is returned to the buyer.

Maximum penalty—100 penalty units.

246 Warrantor to advise whether defect covered by statutory warranty

(1) This section applies if a defect notice is given, and the vehicle is delivered, under section 244.

(2) The warrantor must advise the buyer in writing (***warranty advice***) whether the warrantor accepts or refuses to accept that the defect is covered by the statutory warranty.

(3) If the warrantor fails to give the warranty advice within 5 business days after receiving the defect notice and delivery of

87 *Transport Operations (Road Use Management) Act 1995*, section 21 (Appointment of accredited persons)

the vehicle, the warrantor is taken to have given a warranty advice accepting that the defect is covered by the statutory warranty.

(4) In this section—

business day, in relation to the giving of a warranty advice by a warrantor, means a day, other than Sunday or a public holiday, when the warrantor's place of business is open for business.

247 Warrantor's obligation to repair defects

(1) If the warrantor accepts that the defect is covered by the statutory warranty, the warrantor must repair the defect at the warrantor's expense.

(2) The warrantor must ensure that the defect is repaired within 14 days after the warrantor accepts that the defect is covered by the statutory warranty (the ***repair period***), unless the warrantor has a reasonable excuse.

Maximum penalty—200 penalty units.

(3) If the warrantor nominates a qualified repairer to repair the vehicle, the warrantor must advise the buyer of the qualified repairer's name and the address where the defect is to be repaired.

(4) The warrantor is taken to have repaired the defect if the part of the vehicle affected by the defect is repaired so that it can be reasonably relied on to perform its intended function.

(5) The warrantor's obligation to repair the defect under this section continues even though the warrantor is no longer performing the activities of a licensee.

248 Warrantor's failure to repair

(1) This section applies if the warrantor has by warranty advice or otherwise—

(a) refused to accept that the defect is covered by the statutory warranty; or

(b) accepted that the defect is covered by the statutory warranty but—

(i) failed to repair a defect within the repair period; or

(ii) failed to repair the defect so that the defective part can be reasonably relied on to perform its intended function.

(2) The buyer may apply to a small claims tribunal for an order under this section.

(3) A small claims tribunal may, in addition to the orders it is empowered to make under the *Small Claims Tribunals Act 1973*, section 20,[88] make the following orders—

(a) an order that the defect is or is not a defect covered by the statutory warranty;

(b) an order extending the warranty period for the warranted vehicle to a specified date;

(c) an order declaring the warranted vehicle is covered by the statutory warranty until a specified date.

(4) Also, the tribunal may make an order that the warrantor pay to the buyer a stated amount the tribunal decides is the reasonable cost of having a defect repaired if—

(a) the warrantor has, by warranty advice or otherwise, refused to accept that the defect is covered by the statutory warranty; and

(b) the buyer has had the defect repaired by another person; and

(c) the tribunal decides that the defect was one to which the statutory warranty applied.

(5) The small claims tribunal may make an order under subsection (3)(b) or (c) only if it is satisfied—

(a) the vehicle was not able to be used by the buyer for a period during the warranty period; and

(b) the period from which the order is to be effective to the date the warranty period is to end, and the period during which the vehicle was able to be used by the buyer, taken together, are not more than—

88 *Small Claims Tribunals Act 1973*, section 20 (Orders of tribunals)

(i) for a class A warranted vehicle—3 months; or

(ii) for a class B warranted vehicle—1 month.

(6) If, after the matter is heard by a small claims tribunal, an order is made by the tribunal in the buyer's favour and the warrantor contravenes the order, the contravention is a ground for starting disciplinary proceedings under section 496.[89]

(7) Subsection (6) does not limit any right the buyer may have to enforce the order.

249 Applications for more than prescribed amount

(1) This section applies to an application if—

(a) an application under section 248 may be made to a small claims tribunal; and

(b) the application seeks the payment of an amount (***application amount***) greater than the prescribed amount.

(2) In a provision of this part about the application—

(a) a reference to a small claims tribunal is taken to be a reference to a court having jurisdiction for the recovery of a debt equal to the application amount; and

(b) the provision applies with necessary changes as if the small claims tribunal were the court.

(3) In this section—

prescribed amount has the meaning given by the *Small Claims Tribunals Act 1973*, section 4.

Part 5 General

250 Registered office

An auctioneer's ***registered office*** is—

89 Section 496 (Grounds for starting disciplinary proceedings)

(a) for an auctioneer who is a principal licensee—

(i) the place the auctioneer specifies in the auctioneer's application for an auctioneer's licence as the auctioneer's principal place of business; or

(ii) another place notified to the chief executive by the auctioneer in the approved form as the auctioneer's principal place of business; and

(b) for an auctioneer who is an employed licensee—

(i) the place the auctioneer specifies in the auctioneer's application for an auctioneer's licence as the auctioneer's business address; or

(ii) another place notified to the chief executive by the auctioneer in the approved form as the auctioneer's business address.

251 Auctioneer must notify chief executive of change in place of business etc.

(1) An auctioneer who is a principal licensee must—

(a) notify the chief executive in the approved form of any change in the auctioneer's principal place of business within 14 days after the change; and

(b) notify the chief executive in the approved form of the closure of any place where the auctioneer carries on business within 14 days after the closure; and

(c) notify the chief executive in the approved form of the opening of any place where the auctioneer carries on business within 14 days after the opening.

Maximum penalty—200 penalty units.

(2) An auctioneer who is an employed licensee must notify the chief executive in the approved form of any change in the auctioneer's business address within 14 days after the change.

Maximum penalty—200 penalty units.

252 Display and publication of licensee's name

(1) An auctioneer who is a principal licensee must display at each place the auctioneer carries on business, in the way that may be prescribed under a regulation—

(a) the auctioneer's name; and

(b) if the auctioneer is not the person in charge of the auctioneer's business at the place, the name of the auctioneer who is in charge at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(2) An auctioneer who conducts an auction must display at the auction, in the way and for the period prescribed under a regulation—

(a) the auctioneer's name; and

(b) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(3) An auctioneer who is a principal licensee must not publish, or permit to be published, in a newspaper or elsewhere an advertisement for the auctioneer's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

253 Principal licensee must keep employment register

(1) An auctioneer who is a principal licensee must keep a register (***employment register***) at each place where the auctioneer carries on business.

Maximum penalty—200 penalty units.

(2) The auctioneer must enter, and keep entered, in the employment register—

(a) the name, and the other particulars that may be prescribed under a regulation, of each of the following persons—

(i) a person who is employed by the auctioneer as an employed licensee;

(ii) a trainee auctioneer who is under the supervision and instruction of the auctioneer at the place; and

(b) the activities the trainee auctioneer is authorised to perform for the auctioneer while the trainee is under the supervision and instruction of the auctioneer.

Maximum penalty—200 penalty units.

Note—

The auctioneer must give the trainee auctioneer a statement under section 207 (Auctioneer must give trainee auctioneer employment authority) clearly specifying the trainee's activities.

(3) The auctioneer must—

(a) enter the particulars about each employed licensee or trainee auctioneer, and the activities the employed licensee or trainee is authorised to perform, immediately after the auctioneer starts to employ the employed licensee or supervise and instruct the trainee auctioneer at the place; and

(b) if there is a change in an employed licensee's or trainee's particulars or activities, correct the entry in the way prescribed under a regulation immediately after the change.

Maximum penalty—200 penalty units.

(4) The form of the register may be prescribed under a regulation.

254 Auctioneer to obtain statement from seller of vehicle

(1) An auctioneer must, when buying a motor vehicle or accepting a motor vehicle for sale on consignment from a person (***seller***) in the course of carrying on the auctioneer's business, obtain from the seller a statement, signed by the seller, stating the particulars about the seller and the vehicle that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(2) The auctioneer must—

(a) keep a copy of the statement at the auctioneer's registered office; and

(b) give a copy to the seller; and

(c) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

(3) This section does not apply if the seller is—

(a) a financier of the business of the auctioneer; or

(b) another auctioneer or motor dealer.

255 Auctioneer to give statement to buyer of vehicle

(1) An auctioneer must, immediately after the sale of a motor vehicle to a person (***buyer***) in the course of carrying on the auctioneer's business, give to the buyer a statement, signed by the auctioneer, stating the particulars about the vehicle's owner immediately before the sale and the vehicle that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(2) The auctioneer must—

(a) keep a copy of the statement at the auctioneer's registered office; and

(b) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

(3) Nothing in this section prevents the statement being contained in the contract for sale of the vehicle.

Part 6 Offences

256 Acting as auctioneer

(1) A person must not perform an activity that may be done under the authority of an auctioneer's licence unless the person—

(a) holds an auctioneer's licence and the performance of the activity is authorised under the person's licence; or

(b) is otherwise permitted under this or another Act to perform the activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A person must not act as an auctioneer unless—

(a) the person holds an auctioneer's licence and the act is done under the authority of the person's licence; or

(b) the act is otherwise permitted under this or another Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) Without limiting the ways a person may act as an auctioneer, a person ***acts*** as an auctioneer if the person—

(a) performs an auction; or

(b) advertises or notifies or states that the person performs auctions or is willing to perform auctions; or

(c) in any way holds out as being ready to perform auctions.

257 Pretending to be trainee auctioneer

(1) A person must not act as a trainee auctioneer unless the person holds a registration certificate as a trainee auctioneer.

Maximum penalty—200 penalty units.

(2) In this section—

act as a trainee auctioneer, for a person, includes hold out that the person is a trainee auctioneer.

258 Auctioneer must not act for more than 1 party

(1) An auctioneer must not act for more than 1 party to a transaction.

Maximum penalty—200 penalty units.

(2) If an auctioneer acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made.

(3) An auctioneer does not contravene subsection (1) and subsection (2) does not apply if the transaction is a livestock sale.

259 Production of licence or registration certificate

(1) An auctioneer must, if asked by a person with whom the auctioneer is dealing, produce the auctioneer's licence for inspection by the person.

Maximum penalty—100 penalty units.

(2) A trainee auctioneer must, if asked by a person with whom the trainee is dealing, produce the trainee's registration certificate for inspection by the person.

Maximum penalty—100 penalty units.

260 Employment of persons in auctioneer's business

An auctioneer must not employ, as a trainee auctioneer, a person the auctioneer knows, or ought to know, does not hold a registration certificate as a trainee auctioneer.

Maximum penalty—200 penalty units.

Chapter 8 Property developers

Part 1 Property developer's authorisation and responsibilities

Division 1 Interpretation

261 Meaning of *complete a residential property sale*

(1) A person ***completes a residential property sale*** if a residential property in which the person has an interest is sold.

(2) However, the person is not to be taken to have completed a residential property sale if—

(a) the person appointed a real estate agent, pastoral house or auctioneer (the ***agent***) to sell the interest in the residential property on the person's behalf and the agent is the effective cause of the sale; or

(b) the person held the interest in the residential property as—

(i) a personal representative; or

(ii) an administrator under the *Guardianship and Administration Act 2000*; or

(iii) a beneficiary in, or a trustee of, a deceased person's estate; or

(iv) a mortgagee; or

(c) the person is a corporation and the corporation sold the corporation's interest in the residential property to a related body corporate; or

(d) the interest in the residential property is sold under a court order.

(3) In this section—

related body corporate means a related body corporate under the Corporations Act.[90]

Division 2 Licences

262 What a property developer's licence authorises

(1) A property developer's licence authorises the holder of the licence (***property developer***) to perform the following activities—

(a) to complete more than 6 residential property sales in any 12 month period;

(b) to market residential property in which the property developer has an interest of at least 15%.

(2) A person who completes more than 6 residential property sales in any 12 month period is taken to conduct the business of a property developer.

(3) A property developer may conduct the business of a property developer, either alone or with others.

(4) A property developer who is an individual may be the person in charge of the business of a property developer that is a corporation at the corporation's registered office or at another place where the corporation conducts its business.

263 What a property developer director's licence authorises

A property developer director's licence authorises the holder of the licence (***property developer director***) to conduct the business of a stated property developer that is a corporation at a stated place.

90 See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers).

Division 3 Responsibilities of persons in charge of a licensee's business for salespersons

264 Responsibility for acts and omissions of salespersons

(1) A property developer must take reasonable steps to ensure each property developer salesperson employed by the developer is properly supervised, acts only within the scope of the salesperson's employment authority under section 265 and complies with this Act.

(2) A property developer who fails to comply with subsection (1) is liable to disciplinary action under chapter 14, part 3.[91]

265 Property developer must give salespersons employment authority

Immediately after a property developer starts to employ a property developer salesperson, the developer must give the salesperson a statement (***employment authority***) clearly specifying the activities of a property developer the salesperson is authorised by the developer to perform for the developer during the salesperson's employment by the developer.

Maximum penalty—200 penalty units.

91 Chapter 14 (Claims against the fund and other proceedings), part 3 (Disciplinary proceedings)

Part 2 Conduct provisions

Division 1 Carrying on business

266 Carrying on business under property developer's licence

An individual who conducts the business of a property developer with others is not required to hold a property developer's licence if—

(a) at least 1 of the persons with whom the individual conducts the business is a property developer; and

(b) the individual does not perform the activities of a property developer; and

(c) the individual is a suitable person to hold a licence.

267 Licensee or salesperson to be in charge of a property developer's business at a place

(1) A property developer who is an individual must—

(a) be in charge of the developer's business at the developer's registered office;[92] and

(b) if the developer has more than 1 place of business, ensure that at each other place of business a property developer salesperson is in charge of the developer's business at the place.

Maximum penalty—200 penalty units.

(2) A property developer that is a corporation (***corporate developer***) must ensure that—

(a) the person in charge of the corporate developer's business at its registered office is a property developer director of the corporate developer or another property developer; and

(b) if the corporate developer has more than 1 place of business, at each other place of business a property

92 See section 271 (Registered office).

developer director, or a property developer who is an individual or a property developer salesperson is in charge of the corporate developer's business.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[93]—200 penalty units; or

(b) for a corporation—1000 penalty units.

(3) An individual must not be in charge of a property developer's business at more than 1 place.

Maximum penalty—200 penalty units.

Division 2 Disclosure of interest

268 Disclosures to prospective buyer

(1) A property developer agent marketing residential property must disclose the following to any prospective buyer of the property—

(a) any relationship, and the nature of the relationship (whether personal or commercial), the property developer agent has with anyone to whom the agent refers the buyer for professional services associated with the sale;

Examples of relationships for paragraph (a)—

1 A family relationship.

2 A business relationship, other than a casual business relationship.

3 A fiduciary relationship.

4 A relationship in which 1 person is accustomed, or obliged, to act in accordance with the directions, instructions, or wishes of the other.

(b) whether the property developer agent derives or expects to derive any benefit from a person to whom the agent

93 Section 591 (Executive officers must ensure corporation complies with Act)

has referred the buyer and, if so, the amount, value or nature of the benefit;

(c) the amount, value or nature of any benefit any person has received, receives, or expects to receive in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property.

Examples for paragraph (c) of persons who may receive a benefit—

- seller
- finance broker
- financial adviser
- financier
- property valuer
- solicitor
- residential property developer.

Maximum penalty—200 penalty units.

(2) The disclosure is effective for subsection (1) only if it is—

(a) given to the prospective buyer in the approved form; and

(b) acknowledged by the prospective buyer in writing on the approved form; and

(c) given and acknowledged before a contract for the sale of the residential property is entered into.

(3) The approved form must include a statement that a residential property developer marketing residential property must hold an interest of at least 15% in the property.

(4) Also, for subsection (1)(c), disclosure in compliance with the approved form is sufficient.

(5) In this section—

benefit means monetary or other benefit.

property developer agent means—

(a) a residential property developer; or

(b) a property developer salesperson; or

(c) a person acting as a property developer salesperson in contravention of section 276.[94]

residential property developer means—

(a) a property developer; or

(b) a person acting as a property developer in contravention of section 275.[95]

Division 3 Code of conduct

269 Code of conduct

A regulation may prescribe a code of conduct about property developer practice that may include the following—

(a) setting conduct standards for property developers and property developer salespersons;

(b) establishing principles for fair trading;

(c) providing for a system of complaint resolution.

270 Complaints about conduct

(1) A person aggrieved by the conduct of a property developer or property developer salesperson may complain in writing to the chief executive about the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action about the conduct allowed under this Act.

Note—

Breach of a code of conduct is a ground for starting disciplinary proceedings under section 496 (Grounds for starting disciplinary proceedings).

(3) The investigation may take place and action may be taken against a person who was a property developer or property

94 Section 276 (Pretending to be property developer salesperson)

95 Section 275 (Acting and marketing offences)

developer salesperson even though the person is no longer a property developer or property developer salesperson.

Part 3 General

271 Registered office

A property developer's ***registered office*** is—

(a) the place the developer specifies in the developer's application for a property developer's licence as the developer's principal place of business; or

(b) another place notified to the chief executive by the developer in the approved form as the developer's principal place of business.

272 Property developer must notify chief executive of change in place of business etc.

A property developer who is a principal licensee must—

(a) notify the chief executive in the approved form of any change in the developer's principal place of business within 14 days after the change; and

(b) notify the chief executive in the approved form of the closure of any place where the developer carries on business within 14 days after the closure; and

(c) notify the chief executive in the approved form of the opening of any place where the developer carries on business within 14 days after the opening.

Maximum penalty—200 penalty units.

273 Display and publication of licensee's name

(1) A property developer must display at each place the developer carries on business, in the way that may be prescribed under a regulation—

(a) the developer's name; and

(b) if the developer is not the person in charge of the developer's business at the place, the name of the property developer director or property developer salesperson who is in charge at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(2) A property developer must not publish, or permit to be published, in a newspaper or elsewhere an advertisement for the developer's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

274 Principal licensee must keep employment register

(1) A property developer must keep a register (***employment register***) at the developer's registered office.

Maximum penalty—200 penalty units.

(2) The property developer must enter, and keep entered, in the employment register—

(a) the name, and the other particulars that may be prescribed under a regulation, of each person who is employed by the property developer as a property developer salesperson; and

(b) the activities the salesperson is authorised to perform for the developer during the salesperson's employment by the developer.

Maximum penalty—200 penalty units.

Note—

The property developer must give the salesperson a statement under section 265 (Property developer must give salespersons employment authority) clearly specifying the salesperson's activities.

(3) The property developer must—

(a) enter the particulars about each salesperson, and the activities the salesperson is authorised to perform,

immediately after the salesperson is employed by the property developer; and

(b) if there is a change in an salesperson's particulars or activities, correct the entry in the way prescribed under a regulation immediately after the change.

Maximum penalty—200 penalty units.

(4) The form of the register may be prescribed under a regulation.

Part 4 Offences

275 Acting and marketing offences

(1) A person must not complete more than 6 residential property sales within any 12 month period unless the person holds a property developer's licence.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A property developer who markets residential property in which the property developer has an interest of less than 15% commits an offence.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) A property developer does not contravene subsection (2) if the property developer's interest in the property—

(a) is held as—

(i) a personal representative; or

(ii) an administrator under the *Guardianship and Administration Act 2000*; or

(iii) a beneficiary in, or a trustee of, a deceased person's estate; or

(iv) a mortgagee; or

(b) is sold under a court order.

276 Pretending to be property developer salesperson

(1) A person must not act as a property developer salesperson unless the person holds a registration certificate as a property developer salesperson.

Maximum penalty—200 penalty units.

(2) In this section—

act as a property developer salesperson, for a person, includes hold out that the person is a property developer salesperson.

277 Production of licence

A property developer must, if asked by a person with whom the developer is dealing, produce the developer's licence for inspection by the person.

Maximum penalty—100 penalty units.

278 Employment of persons in property developer's business

(1) A property developer must not employ, as a property developer salesperson, a person the property developer knows, or ought to know, does not hold a registration certificate as a property developer salesperson.

Maximum penalty—200 penalty units.

(2) An individual property developer must not employ, as a property developer salesperson for the business, himself or herself or another individual with whom the property developer carries on business as a property developer.

Maximum penalty—200 penalty units.

(3) A property developer that is a corporation and carries on business as a property developer must not employ an executive officer of the corporation as a property developer salesperson for the business.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[96]—200 penalty units; or

(b) for a corporation—1000 penalty units.

Chapter 9 Motor dealers

Part 1 Motor dealer's authorisation and responsibilities

Division 1 Motor dealer's licence

279 What a motor dealer's licence authorises

(1) A motor dealer's licence authorises the holder of the licence (***motor dealer***) to perform the following activities in the carrying on of a business of motor dealing—

(a) to acquire, primarily for resale, used motor vehicles;

(b) to sell used motor vehicles;

(c) to sell used motor vehicles on consignment as an agent for others for reward;

(d) to sell a leased motor vehicle to the lessee under the terms of the lease;

(e) to acquire used motor vehicles, whether or not as complete units, to break up for sale as parts;

(f) to sell used motor vehicles mentioned in paragraph (e) as parts;

(g) to negotiate, under a consultancy arrangement, for a person who is not a motor dealer or auctioneer for the purchase or sale of a used motor vehicle for the person.

96 Section 591 (Executive officers must ensure corporation complies with Act)

(2) A motor dealer may perform the activities as an employee of another motor dealer who carries on the business of motor dealing.

(3) In this section—

business of motor dealing does not include the business of a financier.

consultancy arrangement, for the purchase or sale of a used motor vehicle, means an arrangement under which a person advises someone else—

(a) where or from whom the other person can buy a used motor vehicle; or

(b) where or to whom the other person can sell a used motor vehicle.

Division 2 Responsibilities of persons in charge of a licensee's business for motor salespersons

280 Responsibility for acts and omissions of motor salespersons

(1) A motor dealer who is a principal licensee must take reasonable steps to ensure each motor salesperson employed by the dealer is properly supervised, acts only within the scope of the salesperson's employment authority under section 281 and complies with this Act.

(2) A motor dealer who is an employed licensee in charge of a licensee's business at a place of business must take reasonable steps to ensure each motor salesperson employed at the place is properly supervised, acts only within the scope of the salesperson's employment authority under section 281 and complies with this Act.

(3) A motor dealer who fails to comply with subsection (1) or (2) is liable to disciplinary action under chapter 14, part 3.[97]

281 Motor dealer must give salespersons employment authority

Immediately after a motor dealer starts to employ a motor salesperson, the dealer must give the salesperson a statement (***employment authority***) clearly specifying the activities of a motor dealer the salesperson is authorised by the dealer to perform for the dealer during the salesperson's employment by the dealer.

Maximum penalty—200 penalty units.

Part 2 Conduct provisions

Division 1 Carrying on business

282 Carrying on of business under motor dealer's licence

An individual who carries on the business of a motor dealer with others is not required to hold a motor dealer's licence if—

(a) at least 1 of the persons with whom the individual carries on business is a motor dealer; and

(b) the individual does not perform the activities of a motor dealer; and

(c) the individual is a suitable person to hold a licence.

97 Chapter 14 (Claims against the fund and other proceedings), part 3 (Disciplinary proceedings)

283 Licensee to be in charge of motor dealer's business at a place

(1) A motor dealer who is an individual and a principal licensee must—

(a) be in charge of the motor dealer's business at the dealer's registered office;[98] and

(b) if the motor dealer has more than 1 place of business, ensure that at each other place of business a motor dealer who is an individual is in charge of the dealer's business at the place.

Maximum penalty—200 penalty units.

(2) A motor dealer that is a corporation and a principal licensee (***corporate dealer***) must ensure that—

(a) the individual in charge of the corporate dealer's business at its registered office is a motor dealer; and

(b) if the corporate dealer has more than 1 place of business, at each other place of business an individual who is a motor dealer is in charge of the corporate dealer's business at the place.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[99]—200 penalty units; or

(b) for a corporation—1000 penalty units.

(3) An individual must not be in charge of a motor dealer's business at more than 1 place.

Maximum penalty—200 penalty units.

(4) It is not an offence against this section for a motor dealer who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.

98 See section 326 (Registered office).

99 Section 591 (Executive officers must ensure corporation complies with Act)

(5) For subsection (4), land is ***contiguous*** with other land only if the parcels of land have a common boundary that is not separated by a public road.

283A Motor dealer dealing in motor vehicles

(1) A motor dealer who is performing an activity the motor dealer is authorised under section 279(1) to perform in relation to a used motor vehicle is taken to be performing the activities of a motor dealer whether or not—

(a) the motor dealer is the registered operator, as defined under the *Transport Operations (Road Use Management) Act 1995*, of the motor vehicle; or

(b) the motor dealer or the motor dealer's associate used the motor vehicle for private purposes.

(2) The motor dealer must disclose to a potential buyer or seller of a vehicle that the licensee is a licensed motor dealer.

Maximum penalty—400 penalty units.

(3) Also, if a person agrees to purchase a motor vehicle from, or sell a motor vehicle to, the motor dealer, the person must sign a written acknowledgement stating the motor dealer disclosed to the person that the licensee is a licensed motor dealer.

Division 2 Consignment selling

284 Appointment—sale on consignment

(1) A motor dealer must not act as a motor dealer for a person (***client***) to sell the client's motor vehicle on consignment unless—

(a) the client first appoints the motor dealer in writing under this section; or

(b) a previous appointment is assigned to the motor dealer under the terms of the appointment or under section 285A and the appointment is in force.

Maximum penalty—200 penalty units.

(2) The appointment may be for the performance of—

(a) a particular service (***single appointment***); or

(b) a number of services over a period (***continuing appointment***).

(3) The appointment must—

(a) state the term of the appointment; and

(b) state the service to be performed by the motor dealer and how it is to be performed; and

(c) state—

(i) the fees, charges and any commission payable for the service; and

(ii) the expenses, including advertising expenses and the costs of preparing the vehicle for sale, the motor dealer is authorised to incur in connection with—

(A) for a single appointment—the performance of the service; or

(B) for a continuing appointment—the performance of each service or category of service; and

(iii) the source and the estimated amount or value of any rebate, discount, commission or benefit that the motor dealer may receive in relation to any expenses the motor dealer is authorised to incur in connection with the performance of the service; and

(iv) any condition, limitation or restriction on the performance of the service; and

(d) state when the fees, charges and any commission for the service become payable.

(4) A continuing appointment must state—

(a) the date the appointment ends; and

(b) the appointment may be revoked on the giving of 90 days notice, or some lesser period (not less than 30 days) agreed by the parties.

(5) The notice revoking a continuing appointment must be by signed writing given to the other party.

(6) The appointment must be signed and dated by the client and the motor dealer or someone authorised or apparently authorised to sign for the dealer.

(7) The motor dealer must give a copy of the signed appointment to the client.

Maximum penalty—200 penalty units.

(8) If an appointment under this section authorises a sale by auction, an appointment under section 210[100] is not required.

285 Form of appointment

(1) The appointment must be in the approved form.

(2) The approved form must include a prominent statement that the client should seek independent legal advice before signing the appointment.

(3) An appointment that does not comply with subsection (1) is ineffective from the time it is made.

285A Proposal for assignment of appointments

(1) This section applies if a motor dealer who holds appointments from clients to sell motor vehicles on consignment under section 284 proposes to assign the appointments to another motor dealer (***proposed assignee***) without changing the terms of the appointment.

(2) However, this section does not apply to the assignment of an appointment if—

(a) the terms of the appointment authorise the assignment of the appointment; and

(b) the assignment is made in accordance with the terms of the appointment.

100 Section 210 (Appointment of auctioneer—general)

(3) At least 14 days before the motor dealer assigns the appointments, the motor dealer must give each client written notice of the proposed assignment.

(4) The notice must state the following—

(a) the proposed assignee's name;

(b) that the appointments are to be assigned without changing the terms of the appointment;

(c) the client may agree or refuse to agree to the proposed assignment;

(d) when the proposed assignment is to take effect.

(5) If the client agrees to the assignment and the motor dealer assigns the appointment under this section, the appointment is taken, for section 285, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

286 Trade-ins

(1) A motor dealer must not accept a trade-in from the buyer of a motor vehicle being sold on consignment.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) However, the motor dealer does not contravene subsection (1) if the dealer purchases the property offered as a trade-in as part of a separate transaction between the dealer and the buyer.

Division 3 Recovery of reward or expense

287 Commission may be claimed only in relation to actual amounts

(1) This section applies to a motor dealer who sells a motor vehicle on consignment for the payment of a commission.

(2) The motor dealer must not claim commission worked out on an amount that is more than the actual sale price of the vehicle.

Maximum penalty—200 penalty units.

288 Restriction on remedy for reward or expense

(1) A person is not entitled to sue for, or recover or retain, a reward or expense for a sale of a motor vehicle on consignment unless, at the time the sale happened, the person—

(a) held a motor dealer's licence; and

(b) was authorised under the person's licence to sell motor vehicles on consignment; and

(c) had been properly appointed under division 2[101] by the person to be charged with the reward or expense.

(2) A person who sues for, or recovers or retains, a reward or expense for a sale of a motor vehicle other than as provided by subsection (1) commits an offence.

Maximum penalty for subsection (2)—200 penalty units.

289 Excess commission etc. to be repaid

(1) This section applies if—

(a) a person is convicted of an offence against section 287(2) or 288(2); and

(b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (***client***) for whom the person performed an activity an amount to which the person was not entitled.

(2) The court must order the person to pay the amount to the client.

(3) The order must be made whether or not any penalty is imposed on the conviction.

101 Division 2 (Consignment selling)

(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

Division 4 Interests in property

290 Definition for div 4

In this division—

obtain includes being in any way concerned in obtaining.

291 Beneficial interest—options

(1) A motor dealer commits an offence if the dealer obtains from the owner of a used motor vehicle, other than another motor dealer, an option to purchase the vehicle in which the dealer has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.

(2) A motor salesperson commits an offence if the salesperson obtains from the owner of a used motor vehicle, other than a motor dealer, an option to purchase the vehicle in which the salesperson has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) A motor dealer must not sell a motor vehicle if the motor dealer has a beneficial interest in an option to purchase the vehicle, other than an option to purchase given by another motor dealer.

Maximum penalty—200 penalty units or 3 years imprisonment.

292 Beneficial interest—other than options

(1) This section applies to a motor vehicle placed by a person (***client***) with a motor dealer for sale on consignment, but does not apply if section 291 applies.

(2) The motor dealer commits an offence if the motor dealer obtains a beneficial interest in the vehicle.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) A motor salesperson employed by the motor dealer commits an offence if the salesperson obtains a beneficial interest in the vehicle.

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) A person does not contravene subsection (2) or (3) if—

(a) the person—

(i) before a contract for the sale of the motor vehicle is entered into, obtains the client's written acknowledgment in the approved form that the client—

(A) is aware that the person is interested in obtaining a beneficial interest in the motor vehicle; and

(B) consents to the person obtaining the interest; and

(ii) acts fairly and honestly in relation to the sale; and

(b) no commission or other reward is payable in relation to the sale; and

(c) the client is in substantially as good a position as the client would be if the motor vehicle were sold at fair market value.

292A Return of beneficial interest if in form of commission

(1) This section applies if—

(a) a person is convicted of an offence against section 292(2) or (3); and

(b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (***client***) for whom the person performed an

activity an amount of commission to which the person was not entitled.

(2) The court must order the person to pay the amount to the client.

(3) The order must be made whether or not any penalty is imposed on the conviction.

(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

Division 5 Code of conduct

293 Code of conduct

A regulation may prescribe a code of conduct about motor dealing practice that may include the following—

(a) setting conduct standards for motor dealers, employed licensees and motor salespersons;

(b) establishing principles for fair trading;

(c) providing for a system of complaint resolution.

294 Complaints about conduct

(1) A person aggrieved by the conduct of a motor dealer or motor salesperson may complain in writing to the chief executive about the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action in relation to the conduct allowed under this Act.

Note—

Breach of a code of conduct is a ground for starting disciplinary proceedings under section 496 (Grounds for starting disciplinary proceedings).

(3) The investigation may take place and action may be taken against a person who was a motor dealer or motor salesperson even though the person complained about is no longer a motor dealer or motor salesperson.

Division 6 Sales of used motor vehicles that are water damaged motor vehicles

294A Notice to be given about used motor vehicle—water damaged motor vehicle

(1) This section applies if a used motor vehicle that is a water damaged motor vehicle is to be sold by a motor dealer, other than by auction, to a prospective buyer (***buyer***).

(2) Before the motor dealer sells the vehicle to the buyer, the motor dealer must tell the buyer that the vehicle is a water damaged vehicle.

Maximum penalty—200 penalty units.

(3) The motor dealer must also ask the buyer to sign an acknowledgement, printed in type no smaller than 12 point, that identifies the used motor vehicle as a water damaged vehicle.

Maximum penalty—200 penalty units.

(4) The motor dealer must—

(a) give the original of the acknowledgement to the buyer; and

(b) keep a copy of the acknowledgement; and

(c) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

Division 7 Sales of used motor vehicles that are written-off vehicles

294B Notice to be given about used motor vehicle—written-off vehicle

(1) This section applies if a used motor vehicle that is an unregistered written-off vehicle is to be sold by a motor dealer, other than by auction, to a prospective buyer (***buyer***).

(2) Before the motor dealer sells the vehicle to the buyer, the motor dealer must tell the buyer that the vehicle is a written-off vehicle and state—

(a) if the vehicle is a repairable write-off—that the vehicle is a repairable write-off and must pass a written-off vehicle inspection under a regulation under the *Transport Operations (Road Use Management) Act 1995* before it can be registered; or

(b) if the vehicle is a statutory write-off—that the vehicle can not be registered.

Maximum penalty—200 penalty units.

(3) The motor dealer must also ask the buyer to sign an acknowledgement, printed in type no smaller than 12 point, that—

(a) identifies the used motor vehicle as a written-off vehicle; and

(b) states whether the vehicle is a repairable write-off or a statutory write-off.

Maximum penalty—200 penalty units.

(4) The motor dealer must—

(a) give the original of the acknowledgement to the buyer; and

(b) keep a copy of the acknowledgement; and

(c) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

Part 3 Guarantee of title for motor vehicles

295 Guarantee of title for motor vehicles

(1) This section applies if a used motor vehicle is to be sold by or for a motor dealer (***selling agent***) to someone else (***buyer***), other than by auction.

Note—

If the sale is by auction, section 233 (Guarantee of title for motor vehicles) applies.

(2) The following person (the ***responsible motor dealer***) must ensure the buyer gains clear title to the motor vehicle at the time property in the vehicle passes to the buyer—

(a) if the selling agent owns the motor vehicle or is appointed to sell the vehicle on consignment for someone other than another motor dealer or auctioneer—the selling agent;

(b) if the selling agent is selling the motor vehicle for another motor dealer or auctioneer—the other motor dealer or auctioneer for whom the selling agent is selling the vehicle.

Maximum penalty—200 penalty units.

(3) In a proceeding for an offence against subsection (2), it is a defence for the defendant to prove that the defendant took all reasonable steps to ensure subsection (2) was complied with.

(4) The selling agent must, immediately after property in the vehicle passes to the buyer—

(a) give the buyer a security interest certificate for the vehicle issued on the day property passes; and

(b) give the buyer an approved form stating—

(i) particulars about the vehicle, including its odometer reading at the time property passes; and

(ii) the responsible motor dealer guarantees the buyer gains clear title to the vehicle at the time property passes; and

(iii) any other particulars prescribed under a regulation; and

(c) ask the buyer to sign an approved form acknowledging receipt of the documents mentioned in paragraphs (a) and (b); and

(d) give the original of the form mentioned in paragraph (b) to the buyer and keep a copy of the form.

Maximum penalty—200 penalty units.

(5) The selling agent may charge the buyer an amount for the provision of the security interest certificate not greater than the amount prescribed under a regulation.

(6) A selling agent who charges a buyer an amount for providing the security interest certificate that is more than the amount prescribed commits an offence.

Maximum penalty—200 penalty units.

(7) A proceeding against a motor dealer or auctioneer for an offence against this section does not affect any civil liability of any person, including the motor dealer or auctioneer, arising out of the same facts that constitute the offence.

(8) In this section—

sold includes sold on consignment.

Part 4 Cooling-off period

296 Definitions for pt 4

In this part—

business day, for a motor dealer, means a day, other than a Sunday or public holiday, when the motor dealer's place of business is open for business.

cooling-off period see section 297.

non-refundable deposit see sections 304(1) and 305(1).

used motor vehicle does not include—

(a) an unregistered motor vehicle—

(i) that is incapable of being registered in Queensland because of its design; or

(ii) intended to be used for wrecking or dismantling; or

(b) a commercial vehicle; or

(c) a caravan.

297 Meaning of *cooling-off period*

(1) The ***cooling-off period*** for the purchase of a used motor vehicle from a motor dealer starts on the day a contract for the purchase of the vehicle is enforceable against the motor dealer.

(2) The ***cooling-off period*** for the purchase of a used motor vehicle ends—

(a) if the motor dealer's actual close of business on the motor dealer's next business day is 5p.m. or later—at the time of the motor dealer's actual close of business on that business day; or

Example 1—

Assume the contract is entered into on Friday and is immediately enforceable. Assume also the cooling-off period is not affected by public holidays and that, on each day the motor dealer is open for business, the motor dealer's actual close of business is not before 5p.m. The cooling-off period ends at the time of the motor dealer's actual close of business on the following Saturday.

Example 2—

Assume the contract is entered into on Friday afternoon, but is conditional on a prior contract to purchase the vehicle not being proceeded with by 5p.m. Saturday. Assume that the prior contract is avoided at 4p.m. Saturday. Assume also the cooling-off period is not affected by public holidays and that, on each day the motor dealer is open for business, the motor dealer's actual close of business is not before 5p.m. The cooling-off period ends at the time of the motor dealer's actual close of business on the following Monday.

(b) if the motor dealer's actual close of business on the motor dealer's next business day is earlier than 5p.m.—at the time of the motor dealer's usual close of

business on the business day immediately following the next business day; or

Example—

Assume the contract is entered into on Tuesday and the motor dealer closes for business on Wednesday at 1p.m. Assume also the cooling-off period is not affected by public holidays and that the contract is immediately enforceable. The cooling-off period ends at the time of the motor dealer's usual close of business on the following Thursday.

(c) at any earlier time the person contracting for the purchase of the vehicle (***buyer***) takes physical possession of the vehicle for a purpose other than—

(i) a vehicle inspection; or

(ii) a test drive.

298 Application of pt 4

(1) This part applies to sales of used motor vehicles by motor dealers.

(2) However, this part does not apply to any of the following sales of used motor vehicles by a motor dealer—

(a) a sale by auction;

(b) a sale on consignment, unless the owner of the vehicle is a motor dealer or auctioneer;

(c) a sale to another motor dealer.

299 Particular vehicles for sale on consignment to be identified as not being subject to cooling-off period

(1) A motor dealer must not advertise or display for sale a motor vehicle for sale on consignment unless it is advertised or displayed for sale as a vehicle that is not subject to a cooling-off period in the way provided under a regulation.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to a sale on consignment of a motor vehicle owned by a motor dealer or auctioneer.

300 Notice to be given about used motor vehicle—no prior contract

(1) This section applies if a used motor vehicle is not subject to any prior contract with a prospective buyer for its sale.

(2) A motor dealer must give to the prospective buyer of the vehicle a written statement in the approved form under this section.

Maximum penalty—200 penalty units.

(3) The statement must include the following—

(a) the motor vehicle, clearly identified, to which the statement relates;

(b) the names and addresses of the motor dealer and prospective buyer;

(c) a clear statement that the prospective buyer may avoid any contract for the purchase of the vehicle from the motor dealer during the cooling-off period;

(d) the day and time when the statement is given;

(e) the day and time the cooling-off period ends;

(f) the amount of non-refundable deposit forfeited by the prospective buyer if the buyer avoids the contract.

(4) The statement must be signed and dated by the prospective buyer and the motor dealer or someone authorised or apparently authorised to sign for the motor dealer.

(5) The motor dealer or authorised person must give the original of the statement to the prospective buyer immediately before the buyer signs any contract for the purchase of the vehicle.

Maximum penalty—200 penalty units.

(6) The motor dealer must keep a copy of the statement and make it available for immediate inspection by an inspector who asks to see it.

Maximum penalty—100 penalty units.

301 Option to purchase during cooling-off period

(1) This section applies if a used motor vehicle is subject to a prior contract with a prospective buyer that is not immediately enforceable.

(2) The motor dealer may give not more than 1 other person (***option holder***) an option to purchase the vehicle even though the vehicle is subject to a prior contract.

(3) If the motor dealer gives an option to purchase the motor vehicle to someone else while an option to purchase is still current, the dealer commits an offence.

Maximum penalty—100 penalty units.

(4) The motor dealer must give the option holder a written statement in the approved form under this section.

Maximum penalty—200 penalty units.

(5) The statement must include the following—

(a) the motor vehicle, clearly identified, to which the statement relates;

(b) the names and addresses of the motor dealer and option holder;

(c) the option to purchase is conditional on a prior contract for the sale of the vehicle being avoided by the buyer under the prior contract;

(d) the option holder has no legally enforceable rights under the option to purchase the vehicle, unless the prior contract is avoided;

(e) when the option holder may exercise the holder's rights under the option;

(f) the day and time when the statement is given;

(g) the amount of non-refundable deposit forfeited by the option holder if the holder declines to enter into a contract for the purchase of the vehicle for any reason other than because the prior contract was not avoided;

(h) any other thing prescribed under a regulation.

(6) The statement must be signed and dated by the option holder and the motor dealer or someone authorised or apparently authorised to sign for the motor dealer.

(7) The motor dealer or authorised person must give the statement to the option holder immediately before the option holder signs the option to purchase the vehicle.

Maximum penalty—200 penalty units.

(8) The motor dealer must keep a copy of the statement and make it available for immediate inspection by an inspector who asks to see it.

Maximum penalty—100 penalty units.

302 Buyer's rights if notice not given or materially defective

(1) This section applies if a person (***buyer***) has purchased a used motor vehicle and—

(a) the buyer has not been given the statement under section 300; or

(b) the statement has been given to the buyer, but the statement is defective in a material particular.

(2) The buyer, by written notice given to the motor dealer, may avoid the contract for the sale of the used motor vehicle.

(3) The notice must be given to the motor dealer within 7 days after the day property in the vehicle passes to the buyer.

(4) If the contract is avoided under this section, the motor dealer—

(a) must do everything in the motor dealer's power to return the buyer to the position the buyer was in before the vehicle was purchased; or

(b) if the buyer can not be returned to that position, is liable for any financial loss suffered by the buyer because the buyer can not be returned to that position.

303 Contract must contain cooling-off clause

(1) A contract for the sale of a used motor vehicle by a motor dealer must contain a clause clearly headed 'COOLING-OFF PERIOD' stating the following—

(a) the day and time the cooling-off period starts;

(b) the day and time the cooling-off period ends;

(c) property in the motor vehicle does not pass to the buyer until the end of the cooling-off period, unless the buyer takes physical possession of the vehicle for a purpose other than—

(i) a vehicle inspection; or

(ii) a test drive;

(d) the buyer or the buyer's agent may possess the vehicle during the cooling-off period, but only for the purpose of having the vehicle independently inspected or test driving the vehicle;

(e) the buyer may avoid the contract at any time during the cooling-off period by giving written notice to that effect to the dealer in accordance with this Act;

(f) the amount of any non-refundable deposit paid by the buyer if the contract is avoided during the cooling-off period;

(g) if the contract is avoided during the cooling-off period, the motor dealer must return to the buyer—

(i) any trade-in vehicle offered by the buyer that the motor dealer has taken possession of; and

(ii) any deposit paid by the buyer, less the amount of non-refundable deposit.

(2) If the contract does not comply with subsection (1), the buyer, by written notice given to the motor dealer, may avoid the contract for the sale of the used motor vehicle.

(3) The notice must be given to the motor dealer within 7 days after the day property in the vehicle passes to the buyer.

304 Consideration for cooling-off period

(1) The consideration payable for the cooling-off period for the purchase of a used motor vehicle (the ***non-refundable deposit***) is the amount prescribed or worked out under a regulation.

(2) The non-refundable deposit may be paid as the deposit or part of the deposit for the vehicle.

(3) If the contract is not avoided during the cooling-off period, the non-refundable deposit must be deducted from the purchase price of the vehicle.

(4) If a deposit is paid in relation to the vehicle—

(a) if the amount of the deposit is more than the amount of the non-refundable deposit—the deposit is taken to include the non-refundable deposit; or

(b) if the amount of the deposit is equal to or less than the amount of the non-refundable deposit—the deposit is taken to be the non-refundable deposit.

(5) If no deposit is paid in relation to the vehicle, the motor dealer is taken to have waived the payment of the non-refundable deposit.

305 Consideration for option

(1) The consideration payable for an option for the purchase of a used motor vehicle (also a ***non-refundable deposit***) under section 301 is the amount prescribed or worked out under a regulation.

(2) If the option holder declines to enter into a contract for the purchase of the vehicle for any reason other than because the prior contract was not avoided, the amount of non-refundable deposit is forfeited by the option holder.

(3) If the option holder enters into a contract for the purchase of the vehicle, the amount of non-refundable deposit paid for the option is taken to be the non-refundable deposit for the cooling-off period.

(4) If no consideration is paid in relation to the option—

(a) the motor dealer is taken to have waived the payment of the non-refundable deposit for the option; and

(b) the option is enforceable by the option holder against the motor dealer despite the absence of consideration.

306 Harassment or coercion

A motor dealer or other person must not harass or coerce a person for the purpose of dissuading or preventing the person from exercising a right conferred on the person by this part.

Maximum penalty—200 penalty units or 2 years imprisonment.

307 Property does not pass during cooling-off period

(1) Property in a used motor vehicle subject to a cooling-off period does not pass to the buyer of the vehicle until the end of the cooling-off period.

(2) Property in a motor vehicle offered to the motor dealer as a trade-in does not pass to the dealer until the end of the cooling-off period.

(3) A deposit, other than a non-refundable deposit, given to a motor dealer by a buyer of a used motor vehicle from the dealer remains the property of the buyer until the end of the cooling-off period.

308 Buyer may avoid contract during cooling-off period

The buyer of a used motor vehicle may avoid the contract to purchase the vehicle during the cooling-off period.

309 Procedure for avoidance

(1) A buyer of a used motor vehicle who wishes to avoid the contract to purchase the vehicle must give the motor dealer or a person apparently working for the motor dealer at the motor dealer's place of business a written notice indicating that the buyer terminates the contract.

(2) The notice must be given before the cooling-off period ends.

(3) Subsection (1) does not limit the *Acts Interpretation Act 1954*, part 10.[102]

310 What happens when contract avoided

(1) Notice given under section 309 brings the contract, and any related contract, to an end.

(2) If the motor dealer to whom notice is given has given an option to purchase the motor vehicle to an option holder under section 301,[103] the motor dealer must immediately advise the option holder that—

(a) the prior contract has been avoided; and

(b) a contract to purchase the vehicle must be entered into before the end of the motor dealer's next business day or any non-refundable deposit is forfeited.

(3) In this section—

related contract includes—

(a) a contract about the provision of finance to purchase the vehicle; and

(b) a contract of insurance for the vehicle.

311 Consideration for used motor vehicle during cooling-off period

(1) A motor dealer may accept a trade-in or other consideration from a buyer of a used motor vehicle before the end of the cooling-off period.

(2) However, the motor dealer must not deal in the trade-in or other consideration during the cooling-off period.

Maximum penalty—200 penalty units or 1 year's imprisonment.

102 *Acts Interpretation Act 1954*, part 10 (Service of documents)

103 Section 301 (Option to purchase during cooling-off period)

(3) The motor dealer must return the trade-in or other consideration immediately to the buyer, at no cost to the buyer, if the buyer avoids the contract under section 309.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(4) Subsection (3) does not require the return to the buyer of any non-refundable deposit paid as consideration for the cooling-off period.

Part 5 Statutory warranty

312 Definitions for pt 5

In this part—

defect see section 313.

defect notice see section 320(1).

motor dealer, for the sale of used motor vehicles, includes a person carrying on the business of a motor dealer without a licence.

repair period see section 323(2).

statutory warranty means the warranty under section 318.

time of taking possession, in relation to a vehicle, means when the buyer of the vehicle takes possession of the vehicle under a contract for its purchase from the motor dealer.

warrantor, of a warranted vehicle,[104] means the motor dealer who owns the vehicle immediately before the time of taking possession.

warranty advice see section 322(2).

warranty period see section 314.

313 Meaning of *defect*

A warranted vehicle has a ***defect*** for this part if—

(a) a part of the vehicle does not perform its intended function; or

(b) a part of the vehicle has deteriorated to an extent where it can not reasonably be relied on to perform its intended function.

314 Meaning of *warranty period*

(1) Subject to subsection (3), the ***warranty period*** of a class A warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached—

(a) the vehicle travels 5000km since the time of taking possession;

(b) 5p.m. on—

(i) the day 3 months after the time of taking possession if that day—

(A) is not a Sunday or public holiday; and

(B) the motor dealer's place of business is open for business; or

(ii) the first day, after the day 3 months after the time of taking possession, that—

(A) is not a Sunday or public holiday; and

(B) the motor dealer's place of business is open for business.

104 *Warranted vehicle* and *unwarranted vehicle* are defined in schedule 2 (Dictionary).

(2) Subject to subsection (3), the ***warranty period*** of a class B warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached—

(a) the vehicle travels 1000km since the time of taking possession;

(b) 5p.m. on—

(i) the day 1 month after the time of taking possession if that day—

(A) is not a Sunday or public holiday; and

(B) the motor dealer's place of business is open for business; or

(ii) the first day, after the day 1 month after the time of taking possession, that—

(A) is not a Sunday or public holiday; and

(B) the motor dealer's place of business is open for business.

(3) The warranty period under subsection (1) or (2) is extended by 1 day for each day or part of a day the warranted vehicle is not in the possession of the buyer of the vehicle if—

(a) the buyer has complied with section 320(1);[105] and

(b) a defect in the vehicle is being repaired by, or at the direction of, the warrantor of the vehicle under the statutory warranty.

315 Application of pt 5

(1) This part applies to each warranted vehicle sold by a motor dealer as owner of the vehicle or on consignment for another motor dealer or auctioneer.

(2) This part does not apply to the sale of a motor vehicle by a motor dealer—

(a) to another motor dealer or an auctioneer; or

105 Section 320 (Buyer's obligations under statutory warranty)

(b) on consignment for a person who is not an auctioneer or motor dealer.

316 Unwarranted and restorable vehicles to be identified when offered for sale

(1) A motor dealer may advertise or display for sale an unwarranted vehicle only if it is advertised or displayed for sale, in the way provided under a regulation, as a vehicle that does not have a statutory warranty.

Maximum penalty—100 penalty units.

(2) Also, a motor dealer may advertise or display for sale a restorable vehicle only if it is advertised or displayed for sale in the way prescribed under a regulation.

Maximum penalty—100 penalty units.

(3) This section does not apply to an unwarranted vehicle that is a caravan, a commercial vehicle or a motorcycle.

316A Waiver of statutory warranty for restorable vehicles

(1) A motor dealer must, before a proposed buyer enters into a contract for the purchase of a restorable vehicle, give the proposed buyer a written notice stating that the buyer may waive the statutory warranty for the vehicle.

(2) If the proposed buyer agrees to purchase the vehicle, the proposed buyer may waive the statutory warranty for the vehicle by signing the notice before the proposed buyer enters into a contract for the sale of the vehicle.

(3) The notice must clearly identify the vehicle to which it relates.

(4) On the signing of the notice, the proposed buyer is taken to waive the statutory warranty for the vehicle when the contract for its purchase is entered into.

317 Motor dealer to give proposed buyer notice about statutory warranty

(1) A motor dealer must, before a contract for the purchase of a warranted vehicle from the motor dealer is entered into, give

the proposed buyer of the vehicle a notice in the approved form.

Maximum penalty—100 penalty units.

(2) A motor dealer must, before a contract for the purchase of an unwarranted vehicle, or a restorable vehicle for which the proposed buyer has signed a notice waiving the statutory warranty under section 316A, from the motor dealer is entered into, give the proposed buyer of the vehicle notice in the approved form that the vehicle does not have a statutory warranty.

Maximum penalty—100 penalty units.

(3) The proposed buyer must acknowledge receipt of a notice given under subsection (1) or (2) by signing a copy of it.

318 Statutory warranty

(1) The warrantor of a warranted vehicle warrants that—

(a) the vehicle is free from defects at the time of taking possession and for the warranty period;[106] and

(b) defects in the vehicle reported during the warranty period will be repaired by the warrantor free of charge.

(2) In this section—

defects does not include defects not covered by the statutory warranty.

319 Defects not covered by statutory warranty

The following defects in a warranted vehicle are not covered by the statutory warranty—

(a) a defect in the vehicle's paintwork or upholstery that should have been apparent on any reasonable inspection of the vehicle before the time of taking possession;

(b) a defect after the time of taking possession—

106 See also section 636 (Transitional provision about statutory warranty under former section 242 or 318).

(i) arising from or incidental to any accidental damage to the vehicle; or

(ii) arising from the buyer's misuse or negligence; or

(iii) in an accessory to the vehicle not fitted to the vehicle when sold to the buyer;

(c) a defect in something else prescribed by regulation.

320 Buyer's obligations under statutory warranty

(1) If the buyer of a warranted vehicle believes the vehicle has a defect the warrantor of the vehicle is obliged to repair under this part, the buyer must give the warrantor written notice of the defect (***defect notice***) before the end of the warranty period and—

(a) if the warranted vehicle is 200km or less from the warrantor's place of business when the defect notice is given, deliver the vehicle to—

(i) the warrantor to repair the defect; or

(ii) a qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect; or

(b) if the warranted vehicle is more than 200km from the warrantor's place of business when the defect notice is given—

(i) deliver the warranted vehicle to the qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle and nearest to the vehicle to repair the defect; or

(ii) deliver, at the warrantor's expense, the warranted vehicle to another qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect.

(2) The buyer is taken to deliver the vehicle and the warrantor is taken to have possession of the vehicle if the buyer makes reasonable efforts to deliver the vehicle under this section but is unable to do so because the warrantor, or the qualified

repairer nominated by the warrantor, refuses to accept delivery of the vehicle.

(3) The place of delivery under subsection (1)(a)(ii) must not be more than 20km from the warrantor's place of business, unless the warrantor and the buyer otherwise agree.

(4) In this section—

qualified repairer, in relation to a warranted vehicle the subject of a defect notice, means a person who is, or holds the qualifications necessary to be appointed under the *Transport Operations (Road Use Management) Act 1995*, section 21[107] to be, an accredited person to perform vehicle safety inspections for the vehicle.

warrantor includes someone apparently working for the warrantor at the warrantor's place of business.

321 Warrantor to record particulars of extension of warranty period

The warrantor must keep a record, in the way prescribed under a regulation, of the day the warranted vehicle is delivered to the warrantor or nominated qualified repairer under section 320 and the day the vehicle is returned to the buyer.

Maximum penalty—100 penalty units.

322 Warrantor to advise whether defect covered by statutory warranty

(1) This section applies if a defect notice is given, and the vehicle is delivered, under section 320.

(2) The warrantor must advise the buyer in writing (***warranty advice***) whether the warrantor accepts or refuses to accept that the defect is covered by the statutory warranty.

(3) If the warrantor fails to give the warranty advice within 5 business days after receiving the defect notice and delivery of

107 *Transport Operations (Road Use Management) Act 1995*, section 21 (Appointment of accredited persons)

the vehicle, the warrantor is taken to have given a warranty advice accepting that the defect is covered by the statutory warranty.

(4) In this section—

business day, in relation to the giving of a warranty advice by a warrantor, means a day, other than Sunday or a public holiday, when the warrantor's place of business is open for business.

323 Warrantor's obligation to repair defects

(1) If the warrantor accepts that the defect is covered by the statutory warranty, the warrantor must repair the defect at the warrantor's expense.

(2) The warrantor must ensure that the defect is repaired within 14 days after the warrantor accepts that the defect is covered by the statutory warranty (the ***repair period***), unless the warrantor has a reasonable excuse.

Maximum penalty—200 penalty units.

(3) If the warrantor nominates someone else to repair the vehicle, the warrantor must advise the buyer of the other person's name and the address where the defect is to be repaired.

(4) The warrantor is taken to have repaired the defect if the part of the vehicle affected by the defect is repaired so that it can be reasonably relied on to perform its intended function.

(5) The warrantor's obligation to repair the defect under this section continues even though the warrantor is no longer carrying on the business, or performing the activities, of a motor dealer or auctioneer.

324 Warrantor's failure to repair

(1) This section applies if the warrantor has by warranty advice or otherwise—

(a) refused to accept that the defect is covered by the statutory warranty; or

(b) accepted that the defect is covered by the statutory warranty but—

(i) failed to repair a defect within the repair period; or

(ii) failed to repair the defect so that the defective part can be reasonably relied on to perform its intended function.

(2) The buyer may apply to a small claims tribunal for an order under this section.

(3) A small claims tribunal may, in addition to the orders it is empowered to make under the *Small Claims Tribunals Act 1973*, section 20,[108] make the following orders—

(a) an order that the defect is or is not a defect covered by the statutory warranty;

(b) an order extending the warranty period for the warranted vehicle to a specified date;

(c) an order declaring the warranted vehicle is covered by the statutory warranty until a specified date.

(4) Also, the tribunal may make an order that the warrantor pay to the buyer a stated amount the tribunal decides is the reasonable cost of having a defect repaired if—

(a) the warrantor has, by warranty advice or otherwise, refused to accept that the defect is covered by the statutory warranty; and

(b) the buyer has had the defect repaired by another person; and

(c) the tribunal decides that the defect was one to which the statutory warranty applied.

(5) The small claims tribunal may make an order under subsection (3)(b) or (c) only if it is satisfied—

(a) the vehicle was not able to be used by the buyer for a period during the warranty period; and

(b) the period from which the order is to be effective to the date the warranty period is to end, and the period during which the vehicle was able to be used by the buyer, taken together, are not more than—

108 *Small Claims Tribunals Act 1973*, section 20 (Orders of tribunals)

(i) for a class A warranted vehicle—3 months; or

(ii) for a class B warranted vehicle—1 month.

(6) If, after the matter is heard by a small claims tribunal, an order is made by the tribunal in the buyer's favour and the warrantor contravenes the order, the contravention is a ground for starting disciplinary proceedings under section 496.[109]

(7) Subsection (6) does not limit any right the buyer may have to enforce the order.

325 Applications for more than prescribed amount

(1) This section applies if—

(a) an application under section 324 may be made to a small claims tribunal; and

(b) the application seeks the payment of an amount (***application amount***) greater than the prescribed amount.

(2) In a provision of this part about the application—

(a) a reference to a small claims tribunal is taken to be a reference to a court having jurisdiction for the recovery of a debt equal to the application amount; and

(b) the provision applies with necessary changes as if the small claims tribunal were the court.

(3) In this section—

prescribed amount has the meaning given by the *Small Claims Tribunals Act 1973*, section 4.

Part 6 General

326 Registered office

A motor dealer's ***registered office*** is—

109 Section 496 (Grounds for starting disciplinary proceedings)

(a) for a motor dealer who is a principal licensee—

(i) the place the dealer specifies in the dealer's application for a motor dealer's licence as the dealer's principal place of business; or

(ii) another place notified to the chief executive by the motor dealer in the approved form as the dealer's principal place of business; and

(b) for a motor dealer who is an employed licensee—

(i) the place the dealer specifies in the dealer's application for a motor dealer's licence as the dealer's business address; or

(ii) another place notified to the chief executive by the dealer in the approved form as the dealer's business address.

327 Motor dealer must notify chief executive of change in place of business etc.

(1) A motor dealer who is a principal licensee must, if the motor dealer changes the place where the motor dealer carries on the motor dealer's principal place of business—

(a) notify the chief executive in the approved form of the change within 14 days after the change; and

(b) when notifying the chief executive of the change, give the chief executive a copy of a document providing evidence of the lawfulness of the use of the place for the purposes of a motor dealer under the *Integrated Planning Act 1997*.

Maximum penalty—200 penalty units.

(2) A motor dealer who is a principal licensee must notify the chief executive in the approved form of the closure of any place where the dealer carries on business within 14 days after the closure.

Maximum penalty—200 penalty units.

(3) A motor dealer who is a principal licensee must—

(a) notify the chief executive in the approved form of the opening of any place where the dealer carries on business within 14 days after the opening; and

(b) when notifying the chief executive of the opening of the place, give the chief executive a copy of a document providing evidence of the lawfulness of the use of the place for the purposes of a motor dealer under the *Integrated Planning Act 1997*.

Maximum penalty—200 penalty units.

(4) A motor dealer who is an employed licensee must notify the chief executive in the approved form of any change in the motor dealer's business address within 14 days after the change.

Maximum penalty—200 penalty units.

328 Display and publication of licensee's name

(1) A motor dealer who is a principal licensee must display at each place the motor dealer carries on business, in the way that may be prescribed under a regulation—

(a) the dealer's name; and

(b) if the dealer is not the person in charge of the dealer's business at the place, the name of the motor dealer who is in charge at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(2) A motor dealer must not publish in a newspaper or elsewhere an advertisement for the dealer's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

329 Principal licensee to keep employment register

(1) A motor dealer who is a principal licensee must keep a register of employees (***employment register***) at each place where the licensee carries on business.

Maximum penalty—200 penalty units.

(2) The motor dealer must enter, and keep entered, in the employment register—

(a) the name, and the other particulars that may be prescribed under a regulation, of each person (***employee***) who is employed as an employed licensee or motor salesperson at the place; and

(b) if the employee is a motor salesperson, the activities the salesperson is authorised to perform for the dealer during the salesperson's employment by the motor dealer.

Maximum penalty—200 penalty units.

Note—

The motor dealer must give the salesperson a statement clearly specifying the salesperson's activities under section 281 (Motor dealer must give salespersons employment authority).

(3) The motor dealer must—

(a) enter the particulars about each employee, and for each motor salesperson, the activities the salesperson is authorised to perform, immediately after the employee is employed at the place; and

(b) if there is a change in an employee's particulars or activities, correct the entry in the way prescribed under a regulation immediately after the change.

Maximum penalty—200 penalty units.

(4) The form of the register may be prescribed under a regulation.

330 Motor dealer to keep transactions register

(1) A motor dealer must keep, at each place the motor dealer carries on business, a register of transactions (***transactions register***).

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) The motor dealer must enter, and keep entered, in the transactions register the particulars that may be prescribed under a regulation for each transaction entered into in the course of business within 24 hours after the transaction is completed.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(3) The form of the register may be prescribed under a regulation.

(4) If the register is kept in electronic form, the motor dealer is taken to comply with subsection (1) if information in the register can be accessed electronically and as hard copy from the place of business.

(5) In this section—

motor dealer—

(a) means a motor dealer who is a principal licensee or a person in charge of a licensee's business at a place; but

(b) does not include a motor dealer whose licence is conditioned to allow the dealer to perform only the activity of negotiating, under a consultancy arrangement, for a person who is not a motor dealer or auctioneer for the purchase of a motor vehicle for the person.

transaction means any of the following—

(a) a sale;

(b) a purchase;

(c) accepting a deposit;

(d) giving an option to purchase;

(e) accepting a trade-in;

(f) accepting a motor vehicle for sale on consignment;

(g) a transfer of a motor vehicle from 1 place of business to another place of business.

331 Motor dealer to obtain statement from seller of vehicle

(1) A motor dealer must, when buying a motor vehicle or accepting a motor vehicle for sale on consignment from a person (***seller***) in the course of carrying on the motor dealer's business, obtain from the seller a statement, signed by the seller, stating the particulars about the seller and the vehicle that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(2) The motor dealer must—

(a) keep a copy of the statement at the motor dealer's place of business; and

(b) give a copy to the seller; and

(c) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

(3) This section does not apply if the seller is—

(a) a financier of the business of the motor dealer; or

(b) another motor dealer or auctioneer.

332 Motor dealer to give statement to buyer of vehicle

(1) A motor dealer must, when selling a motor vehicle, including when selling on consignment, to a person (***buyer***), give to the buyer a statement, signed by the motor dealer, stating the particulars about the vehicle's owner immediately before the sale and the vehicle that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(2) The motor dealer must—

(a) keep a copy of the statement at the motor dealer's place of business; and

(b) give a copy of the statement to the buyer immediately after it is signed; and

(c) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

(3) Nothing in this section prevents the statement being contained in the contract for sale of the vehicle.

333 Contract of sale

(1) A motor dealer must ensure that a contract for the sale of a motor vehicle by the motor dealer—

(a) is in writing; and

(b) contains the particulars that may be prescribed under a regulation in the way prescribed under the regulation.

Maximum penalty—200 penalty units.

(2) The motor dealer must—

(a) give 1 copy of the contract to each other person signing the contract immediately after it is signed; and

(b) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

(3) A contract for the sale of a motor vehicle by a motor dealer that is not in writing is not enforceable against the buyer of the motor vehicle.

Part 7 Offences

334 Acting as motor dealer

(1) A person must not carry on the business of a motor dealer unless—

(a) the person holds a motor dealer's licence; and

(b) the activities performed in the carrying on of business as a motor dealer are authorised under the person's licence.

Maximum penalty—400 penalty units or 2 years imprisonment.

(2) Without limiting the ways a person may carry on the business of a motor dealer, a person ***carries on business*** as a motor dealer if the person—

(a) advertises or notifies or states that the person carries on the business of motor dealing, either generally or in relation to a single transaction; or

(b) in any way holds out as being ready to carry on the business of motor dealing, either generally or in relation to a single transaction.

(3) This section does not apply to a person who carries on a business that is primarily concerned with the hiring out or leasing of motor vehicles.

335 Pretending to be motor salesperson

(1) A person must not act as a motor salesperson unless the person holds a registration certificate as a motor salesperson.

Maximum penalty—200 penalty units.

(2) In this section—

act as a motor salesperson, for a person, includes hold out that the person is a motor salesperson.

336 Motor dealer must not act for more than 1 party

(1) A motor dealer must not act for more than 1 party to a transaction.

Maximum penalty—200 penalty units.

(2) If the motor dealer acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made.

337 Production of licence or registration certificate

(1) A motor dealer must, if asked by a person with whom the dealer is dealing, produce the dealer's licence for inspection by the person.

Maximum penalty—100 penalty units.

(2) A motor salesperson must, if asked by a person with whom the salesperson is dealing, produce the salesperson's registration certificate for inspection by the person.

Maximum penalty—100 penalty units.

338 Employment of persons in motor dealer business

(1) A motor dealer must not employ, as a motor salesperson, a person the motor dealer knows, or ought to know, does not hold a registration certificate as a motor salesperson.

Maximum penalty—200 penalty units.

(2) A principal licensee who is an individual and carries on the business of a motor dealer must not employ, as a registered employee for the business, himself or herself or another individual with whom the principal licensee carries on business as a motor dealer.

Maximum penalty—200 penalty units.

(3) A principal licensee that is a corporation and carries on business as a motor dealer must not employ an executive officer of the corporation as a motor salesperson for the business.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[110]—200 penalty units; or

(b) for a corporation—1000 penalty units.

110 Section 591 (Executive officers must ensure corporation complies with Act)

Chapter 10 Commercial agents

Part 1 Commercial agent's authorisation and responsibilities

Division 1 Commercial agent's licence

339 What a commercial agent's licence authorises

(1) A commercial agent's licence authorises the holder of the licence (***commercial agent***) to perform the following activities as an agent for others for reward—

(a) to find, or repossess, for a person any goods or chattels that the person is entitled to repossess under an agreement;

(b) to collect, or request payment of, debts;

(c) to serve any writ, claim, application, summons or other process.

(2) A commercial agent may perform the activities in the carrying on of a business, either alone or with others, or as an employee of someone else.

Division 2 Responsibilities of persons in charge of a licensee's business for commercial subagents

340 Responsibility for acts and omissions of commercial subagent

(1) A commercial agent who is a principal licensee must take reasonable steps to ensure each commercial subagent employed by the agent is properly supervised, acts only within the scope of the subagent's employment authority under section 341 and complies with this Act.

(2) A commercial agent who is an employed licensee in charge of a commercial agent's business at a place must take reasonable steps to ensure each commercial subagent employed at the place is properly supervised, acts only within the scope of the subagent's employment authority under section 341 and complies with this Act.

(3) A commercial agent who fails to comply with subsection (1) or (2) is liable to disciplinary action under chapter 14, part 3.[111]

341 Commercial agent must give commercial subagents employment authority

Immediately after a commercial agent starts to employ a commercial subagent, the agent must give the subagent a statement (***employment authority***) clearly specifying the activities of a commercial agent the subagent is authorised by the agent to perform for the agent during the subagent's employment by the agent.

Maximum penalty—200 penalty units.

Part 2 Conduct provisions

Division 1 Carrying on business

342 Carrying on of business under commercial agent's licence

An individual who carries on the business of a commercial agent with others is not required to hold a commercial agent's licence if—

(a) at least 1 of the persons with whom the individual carries on business is a commercial agent; and

111 Chapter 14 (Claims against the fund and other proceedings), part 3 (Disciplinary proceedings)

(b) the individual does not perform the activities of a commercial agent; and

(c) the individual is a suitable person to hold a licence.

343 Licensee to be in charge of commercial agent's business at a place

(1) A commercial agent who is an individual and a principal licensee must—

(a) be in charge of the agent's business at the agent's registered office;[112] and

(b) if the commercial agent has more than 1 place of business, ensure that at each other place of business a commercial agent who is an individual is in charge of the agent's business at the place.

Maximum penalty—200 penalty units.

(2) A commercial agent that is a corporation and a principal licensee (***corporate agent***) must ensure that—

(a) the individual in charge of the corporate agent's business at its registered office is a commercial agent; and

(b) if the corporate agent has more than 1 place of business, at each other place of business an individual who is a commercial agent is in charge of the corporate agent's business at the place.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[113]—200 penalty units; or

(b) for a corporation—1000 penalty units.

(3) An individual must not be in charge of a commercial agent's business at more than 1 place.

Maximum penalty—200 penalty units.

112 See section 350 (Registered office).

113 Section 591 (Executive officers must ensure corporation complies with Act)

(4) It is not an offence against subsection (1) or (2) for a commercial agent who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.

(5) For subsection (4), land is ***contiguous*** with other land only if the parcels of land have a common boundary that is not separated by a public road.

Division 2 Appointment

344 Appointment of commercial agent

(1) A commercial agent must not act as a commercial agent for a person (***client***) to perform an activity (***service***) for the client unless—

(a) the client appoints the agent in writing under this section; or

(b) a previous appointment has been assigned to the agent under the terms of the appointment or under section 345A and the appointment is in force.

Maximum penalty—200 penalty units.

(2) The appointment may be for the performance of—

(a) a particular service (***single appointment***); or

(b) a number of services over a period (***continuing appointment***).

(3) The appointment must—

(a) state the service to be performed by the commercial agent and how it is to be performed; and

(b) state—

(i) the fees, charges and any commission payable for the services; and

(ii) the expenses, including travelling expenses, the commercial agent is authorised to incur in connection with—

(A) for a single appointment—the performance of the service; or

(B) for a continuing appointment—the performance of each service or category of service; and

(iii) the source and the estimated amount or value of any rebate, discount, commission or benefit that the commercial agent may receive in relation to any expenses the commercial agent is authorised to incur in connection with the performance of the service; and

(iv) any condition, limitation or restriction on the performance of the service; and

(c) state when the fees, charges and any commission for the service become payable.

(4) A continuing appointment must state—

(a) the date the appointment ends; and

(b) the appointment may be revoked on the giving of 90 days notice, or some lesser period (not less than 30 days) agreed by the parties.

(5) The notice revoking a continuing appointment must be by signed writing given to the other party.

(6) The appointment must be signed and dated by the client and the commercial agent or someone authorised or apparently authorised to sign for the agent.

(7) The commercial agent must give a copy of the signed appointment to the client.

Maximum penalty for subsection (7)—200 penalty units.

345 Form of appointment

(1) The appointment must be in writing and contain any particulars that may be prescribed under a regulation.

(2) An appointment that does not comply with subsection (1) is ineffective from the time it is made.

345A Proposal for assignment of appointments

(1) This section applies if a commercial agent who holds appointments from clients to perform services for the clients under section 344 proposes to assign the appointments to another commercial agent (***proposed assignee***) without changing the terms of the appointment.

(2) However, this section does not apply to the assignment of an appointment if—

(a) the terms of the appointment authorise the assignment of the appointment; and

(b) the assignment is made in accordance with the terms of the appointment.

(3) At least 14 days before the commercial agent assigns the appointments, the commercial agent must give each client written notice of the proposed assignment.

(4) The notice must state the following—

(a) the proposed assignee's name;

(b) that the appointments are to be assigned without changing the terms of the appointment;

(c) the client may agree or refuse to agree to the proposed assignment;

(d) when the proposed assignment is to take effect.

(5) If the client agrees to the assignment and the commercial agent assigns the appointment under this section, the appointment is taken, for section 344, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

Division 3 Recovery of expenses and costs

346 Restriction on remedy for reward or expense

(1) A person is not entitled to sue for, or recover or retain, a reward or expense for the performance of an activity as a commercial agent unless, at the time the activity was performed, the person—

(a) held a commercial agent's licence; and

(b) was authorised under the person's licence to perform the activity; and

(c) had been properly appointed under division 2[114] by the person to be charged with the reward or expense.

(2) A person who sues for, or recovers or retain, a reward or expense for the performance of an activity as a commercial agent other than as provided by subsection (1) commits an offence.

Maximum penalty for subsection (2)—200 penalty units.

347 Recovery of costs of commercial agent

(1) A person must not recover or attempt to recover from a debtor the costs or expenses of a commercial agent for—

(a) collecting or attempting to collect a debt owed by the debtor; or

(b) repossessing or attempting to repossess goods or chattels from the debtor.

Maximum penalty—200 penalty units.

(2) Subsection (1)(b) does not apply to prevent a person who appoints a commercial agent to repossess goods or chattels from a debtor from recovering the commercial agent's costs and expenses if the person has a right under an agreement with the debtor or otherwise to recover the costs or expenses.

(3) Costs or expenses recovered in contravention of subsection (1) may be recovered by the debtor as a debt.

(4) This section applies subject to the Consumer Credit Code.

(5) In this section—

costs do not include—

(a) stamp duty; or

(b) legal costs fixed by, or payable under, rules of court or a court order.

114 Division 2 (Appointment)

debtor includes a person from whom goods or chattels may be lawfully repossessed.

Division 4 Code of conduct

348 Code of conduct

A regulation may prescribe a code of conduct about commercial agency practice that may include the following—

(a) setting conduct standards for commercial agents and commercial subagents;

(b) establishing principles for fair trading;

(c) providing for a system of complaint resolution.

349 Complaints about conduct

(1) A person aggrieved by the conduct of a commercial agent or commercial subagent may complain in writing to the chief executive about the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action in relation to the conduct allowed under this Act.

Note—

Breach of a code of conduct is a ground for starting disciplinary proceedings under section 496 (Grounds for starting disciplinary proceedings).

(3) The investigation may take place and action may be taken against a person who was a commercial agent or commercial subagent even though the person complained about is no longer a commercial agent or commercial subagent.

Part 3 General

350 Registered office

A commercial agent's ***registered office*** is—

(a) for a commercial agent who is a principal licensee—

(i) the place the agent specifies in the agent's application for a commercial agent's licence as the agent's principal place of business; or

(ii) another place notified to the chief executive by the agent in the approved form as the agent's principal place of business; and

(b) for a commercial agent who is an employed licensee—

(i) the place the agent specifies in the agent's application for a commercial agent's licence as the agent's business address; or

(ii) another place notified to the chief executive by the agent in the approved form as the agent's business address.

351 Commercial agent must notify chief executive of change in place of business etc.

(1) A commercial agent who is a principal licensee must—

(a) notify the chief executive in the approved form of any change in the agent's principal place of business within 14 days after the change; and

(b) notify the chief executive in the approved form of the closure of any place where the agent carries on business within 14 days after the closure; and

(c) notify the chief executive in the approved form of the opening of any place where the agent carries on business within 14 days after the opening.

Maximum penalty—200 penalty units.

(2) A commercial agent who is an employed licensee must notify the chief executive in the approved form of any change in the agent's business address within 14 days after the change.

Maximum penalty—200 penalty units.

352 Display and publication of licensee's name

(1) A commercial agent who is a principal licensee must display at each place the commercial agent carries on business, in the way that may be prescribed under a regulation—

(a) the agent's name; and

(b) if the agent is not the person in charge of the agent's business at the place, the name of the commercial agent who is in charge of the agent's business at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(2) A commercial agent must not publish in a newspaper or elsewhere an advertisement for the agent's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

353 Principal licensee must keep employment register

(1) A commercial agent who is a principal licensee must keep a register (***employment register***) at each place where the licensee carries on business.

Maximum penalty—200 penalty units.

(2) The commercial agent must enter, and keep entered, in the employment register—

(a) the name, and the other particulars that may be prescribed under a regulation, of each person (***employee***) who is employed as a commercial agent or commercial subagent at the place; and

(b) if the employee is a commercial subagent, the activities the subagent is authorised to perform for the agent during the subagent's employment by the agent.

Maximum penalty—200 penalty units.

Note—

The commercial agent must give the employee a statement clearly specifying the employee's activities under section 341 (Commercial agent must give commercial subagents employment authority).

(3) The commercial agent must—

(a) enter the particulars about each employee, and for each commercial subagent, the activities the subagent is authorised to perform, immediately after the employee is employed at the place; and

(b) if there is a change in an employee's particulars or activities, correct the entry in the way prescribed under a regulation immediately after the change.

Maximum penalty—200 penalty units.

(4) The form of the register may be prescribed under a regulation.

Part 4 Offences

354 Acting as commercial agent

(1) A person must not, as an agent for someone else for reward, perform an activity that may be done under the authority of a commercial agent's licence unless the person—

(a) holds a commercial agent's licence and the performance of the activity is authorised under the person's licence; or

(b) is otherwise permitted under this or another Act to perform the activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A person must not act as a commercial agent unless—

(a) the person holds a commercial agent's licence and the act is done under the authority of the person's licence; or

(b) the act is otherwise permitted under this or another Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) Without limiting the ways a person may act as a commercial agent, a person ***acts*** as a commercial agent if the person—

(a) performs an activity mentioned in section 339(1);[115] or

(b) advertises, notifies or states that the person—

(i) performs an activity mentioned in section 339(1); or

(ii) is willing to perform an activity mentioned in section 339(1); or

(c) in any way holds out as being ready to perform an activity mentioned in section 339(1).

(4) However—

(a) a person does not act as a commercial agent only because the person requests, by telephone, payment of a debt for a commercial agent as an employee of the agent if the request is made under the supervision of the agent; and

(b) a lawyer does not act as a commercial agent only because the lawyer collects debts in the lawyer's practice if the lawyer complies with the requirements of the *Trust Accounts Act 1973* in relation to the debts.

355 Pretending to be commercial subagent

(1) A person must not act as a commercial subagent unless the person holds a registration certificate as a commercial subagent.

Maximum penalty—200 penalty units.

115 Section 339 (What a commercial agent's licence authorises)

(2) A person does not act as a commercial subagent only because the persons requests, by telephone, payment of a debt for a commercial agent as an employee of the agent if the request is made under the supervision of the agent.

(3) In this section—

act as a commercial subagent, for a person, includes hold out that the person is a commercial subagent.

356 Commercial agent must not act for more than 1 party

(1) A commercial agent who is appointed to perform an activity for a person (***client***) in relation to another person must not accept appointment from the other person to perform an activity while the agent continues to act for the client in relation to the other person.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply if the commercial agent acts for more than 1 party in relation to a debt agreement under the *Bankruptcy Act 1966* (Cwlth), part IX.

357 Production of licence or registration certificate

(1) A commercial agent must, if asked by a person with whom the agent is dealing, produce the agent's licence for inspection by the person.

Maximum penalty—100 penalty units.

(2) A commercial subagent must, if asked by a person with whom the subagent is dealing, produce the subagent's registration certificate for inspection by the person.

Maximum penalty—100 penalty units.

358 Employment of persons in commercial agent's business

(1) A commercial agent must not employ, as a commercial subagent, a person the commercial agent knows, or ought to know, does not hold a registration certificate as a commercial subagent.

Maximum penalty—200 penalty units.

(2) A principal licensee who is an individual and carries on the business of a commercial agent must not employ, as a commercial subagent for the business, himself or herself or another individual with whom the principal licensee carries on business as a commercial agent.

Maximum penalty—200 penalty units.

(3) A principal licensee that is a corporation and carries on business as a commercial agent must not employ an executive officer of the corporation as a commercial subagent for the business.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591[116]—200 penalty units; or

(b) for a corporation—1000 penalty units.

359 Licence not to be used improperly

(1) A commercial agent or subagent must not—

(a) represent that the person's commercial agent's licence or registration certificate entitles the person to exercise a power the person may not lawfully exercise; or

(b) use the person's licence or certificate to exercise a power the person may not lawfully exercise.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) In this section—

represent includes suggest and imply.

use includes attempt to use.

116 Section 591 (Executive officers must ensure corporation complies with Act)

360 Unlawful entry

A commercial agent or subagent must not, when performing the activities of a commercial agent, enter any premises without lawful authority.

Maximum penalty—200 penalty units or 1 year's imprisonment.

361 Misrepresentation

(1) A commercial agent or subagent must not by any false or misleading representation induce a person to enter into an arrangement for the payment of a debt.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) In this section—

false or misleading, in relation to a representation, includes the wilful concealment of a material fact in the representation.

induce includes attempt to induce.

362 Impersonating commercial agents

(1) A creditor, when dealing with a person for payment of a debt, must not use any name, description, document or device intended to make the person believe that the person is not dealing directly with the creditor, but with a commercial agent acting on the creditor's behalf.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A commercial agent must not give any document to a creditor to enable the creditor to make a third person believe that the third person is dealing directly with the commercial agent.

Maximum penalty—200 penalty units or 2 years imprisonment.

Example for subsection (2)—

Commercial agent's letterhead or stationery.

Chapter 11 Residential property sales

Part 1 Preliminary

363 Purposes of ch 11

The purposes of this chapter are—

(a) to give persons who enter into relevant contracts a cooling-off period; and

(b) to require all proposed relevant contracts or relevant contracts for the sale of residential property in Queensland to include consumer protection information, including a statement that a relevant contract is subject to a cooling-off period; and

(c) to enhance consumer protection for buyers of residential property by ensuring, as far as practicable, the independence of lawyers acting for buyers.

364 Definitions for ch 11

In this chapter—

attached, in relation to a warning statement, any information sheet and a contract, means attached in a secure way so that the warning statement, any information sheet and the contract appear to be a single document.

Examples of ways a warning statement and any information sheet may be attached to a contract—

- stapling
- binding

business day means a day other than a Saturday, Sunday or public holiday.

cooling-off period, for a relevant contract, means a period of 5 business days—

(a) starting on the day the buyer under the relevant contract is bound by the relevant contract or, if the buyer is bound by the relevant contract on a day other than a

business day, the first business day after the day the buyer is bound by the relevant contract; and

(b) ending at 5p.m. on the fifth business day.

Example—

Assume a contract is entered into at any time on Monday and the buyer is bound by the contract. Assume also that the cooling-off period is not affected by public holidays. The cooling-off period ends at 5p.m. on Friday.

disclosure statement see the *Body Corporate and Community Management Act 1997*, section 205A.

electronic communication see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

formed on a sale by auction means formed on sale by auction—

(a) directly on the fall of the hammer, by outcry; or

(b) directly at the end of another similar type of competition for purchase.

Examples—

1 A contract for the sale of property is formed on a sale by auction when the auctioneer declares the property sold on the fall of the hammer.

2 A contract for the sale of property is not formed on a sale by auction when the property is passed in at auction and a bidder subsequently negotiates and purchases the property.

information sheet see the *Body Corporate and Community Management Act 1997*, section 206(5) or (6) or 213(5) or (5A).

relevant contract means a contract for the sale of residential property in Queensland, other than a contract formed on a sale by auction.

termination penalty, in relation to a relevant contract, means an amount equal to 0.25% of the purchase price under the relevant contract.

unit sale means a sale of a lot included in a community titles scheme, or proposed to be included in a community titles scheme, within the meaning of the *Body Corporate and Community Management Act 1997*.

warning statement means a statement in the approved form that includes the information mentioned in section 366D(1).

364A Relationship with Electronic Transactions (Queensland) Act

To remove any doubt, it is declared that the use of electronic communication under this chapter is subject to the *Electronic Transactions (Queensland) Act 2001*.

365 When parties are bound under a relevant contract

(1) The buyer and the seller under a relevant contract are bound by the relevant contract when—

(a) for a relevant contract, other than a relevant contract relating to a unit sale—the buyer or the buyer's agent receives the warning statement and the relevant contract from the seller or the seller's agent in a way mentioned in subsection (2); or

(b) for a relevant contract relating to a unit sale—the buyer or the buyer's agent receives the warning statement, the information sheet and the relevant contract in a way mentioned in subsection (2A).

Note—

See the *Electronic Transactions (Queensland) Act 2001*, section 11 for a requirement about consent and section 24 for rules about when an electronic communication is received.

(2) For a relevant contract, other than a relevant contract relating to a unit sale, the ways are—

(a) by fax, but only if the documents mentioned in subparagraphs (i), (ii), (iii) and (iv) are sent in the following order—

(i) a single cover page that includes a clear statement directing the attention of the buyer or the buyer's agent to the warning statement and the relevant contract;

(ii) the warning statement;

(iii) the relevant contract;

(iv) any other documents; and

(b) by electronic communication other than fax, if the electronic communication contains—

(i) a message that includes a clear statement directing the attention of the buyer or the buyer's agent to the warning statement and the relevant contract; and

(ii) a single document, consisting only of the warning statement and the relevant contract, that is protected against unauthorised change, with the warning statement appearing as the first or top page of the document; and

Example of electronic communication—

- email

(c) by being handed or otherwise receiving the documents mentioned in paragraph (a)(ii) and (iii) other than by electronic communication, if—

(i) the warning statement is attached to the relevant contract and appears as the first or top page; and

(ii) the seller or the seller's agent directs the attention of the buyer or the buyer's agent to the warning statement and the relevant contract.

Example of receipt other than by electronic communication—

- post

Examples of how attention may be directed—

- by oral advice
- by including a paragraph in an accompanying letter

(2A) For a relevant contract relating to a unit sale, the ways are—

(a) by fax, but only if the documents mentioned in subparagraphs (i), (ii), (iii), (iv) and (v) are sent in the following order—

(i) a single cover page that includes a clear statement directing the attention of the buyer or the buyer's agent to the warning statement, the information sheet and the relevant contract;

(ii) the warning statement;

(iii) the information sheet;

(iv) the relevant contract;

(v) any other documents; and

(b) by electronic communication other than fax, if the electronic communication contains—

(i) a message that includes a clear statement directing the attention of the buyer or the buyer's agent to the warning statement, the information sheet and the relevant contract; and

(ii) a single document, consisting only of the warning statement, the information sheet and the relevant contract, that is protected against unauthorised change, with the warning statement appearing as the first or top page of the document and the information sheet appearing immediately after the warning statement; and

Example of electronic communication—

- email

(c) by being handed or otherwise receiving the documents mentioned in paragraph (a)(ii), (iii) and (iv) other than by electronic communication, if—

(i) the warning statement and the information sheet are attached to the relevant contract with the warning statement appearing as the first or top page of the document and the information sheet appearing immediately after the warning statement; and

(ii) the seller or the seller's agent directs the attention of the buyer or the buyer's agent to the warning statement, the information sheet and the relevant contract.

Example of receipt other than by electronic communication—

- post

Examples of how attention may be directed—

- by oral advice
- by including a paragraph in an accompanying letter

(3) Without limiting how the buyer may withdraw the offer to purchase made in the contract form, the buyer may withdraw the offer at any time before being bound by the relevant contract under subsection (1) by giving written notice of withdrawal, including notice by fax, to the seller or the seller's agent.

(4) For this section, a thing sent by fax is taken to be received by the person to whom it is sent if the sender's fax machine indicates that transmission has been successful.

(5) If a dispute arises about when the buyer and the seller are bound by the relevant contract, the onus is on the seller to prove when the parties were bound by the relevant contract.

(6) In this section—

buyer's agent includes a lawyer or licensee acting for the buyer and a person authorised by the buyer or by law to sign the relevant contract on the buyer's behalf.

365A Buyer to receive copy of property valuation buyer pays for

(1) This section applies if, for a relevant contract—

(a) it is a term of the relevant contract that the buyer must pay for a valuation of the property that, under the relevant contract, is not required to have been given to the buyer before the relevant contract is entered into; or

(b) the seller or the seller's agent otherwise requires that the buyer must pay for a valuation of the property that is not required to be given or to have been given to the buyer before the relevant contract is entered into.

(2) Despite the term or requirement, the seller or agent commits an offence if the seller or agent fails to give the buyer a copy of the valuation before the relevant contract is entered into.

Maximum penalty—200 penalty units.

(3) The term or requirement is effective only if, before the relevant contract is entered into by the buyer, the buyer receives the valuation and, in writing, acknowledges the receipt.

(4) Subsection (3) does not affect subsection (2).

(5) A contravention of subsection (2) does not affect the validity of the relevant contract.

365B Lawyer's disclosure to buyer about independence

(1) This section applies if a buyer or prospective buyer (***buyer***) engages a lawyer in relation to the purchase or proposed purchase of a residential property under a relevant contract or a proposed relevant contract.

(2) The lawyer must give the buyer a lawyer's certificate in the approved form and explain to the buyer the purpose and nature of the certificate.

(3) The lawyer's certificate must be signed and dated by the lawyer and must state—

(a) whether the lawyer is independent of the seller, the seller's agents and anyone else involved in the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property and whether the lawyer has a business, family or other relationship with any of those persons; and

(b) whether the lawyer has received, is receiving, or expects to receive a benefit in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property, other than professional costs and disbursements payable by the buyer; and

(c) the lawyer has explained to the buyer the purpose and nature of the certificate.

(4) In this section—

benefit means monetary or other benefit.

Part 2 Warning statements

366 Warning statement if proposed relevant contract is faxed

(1) This section applies if a proposed relevant contract is faxed to a proposed buyer or the proposed buyer's agent for signing, whether or not the proposed relevant contract has been signed by the seller.

(2) If the proposed relevant contract does not relate to a unit sale, the seller or the seller's agent must, when faxing the proposed relevant contract, fax the documents mentioned in paragraphs (a), (b), (c) and (d) in the following order—

(a) a single cover page that includes a clear statement directing the proposed buyer's attention to the warning statement and the proposed relevant contract;

(b) the warning statement;

(c) the proposed relevant contract;

(d) any other documents.

(3) If the proposed relevant contract does relate to a unit sale, the seller or the seller's agent must, when faxing the proposed relevant contract, fax the documents mentioned in paragraphs (a), (b), (c), (d), (e) and (f) in the following order—

(a) a single cover page that includes a clear statement directing the proposed buyer's attention to the warning statement, the information sheet, the proposed relevant contract and, if a disclosure statement has not already been given to the buyer or to the buyer's agent, the disclosure statement;

(b) the warning statement;

(c) the information sheet;

(d) the proposed relevant contract;

(e) if the disclosure statement has not already been given to the buyer or the buyer's agent, the disclosure statement;

(f) any other documents.

(4) If subsection (2) or (3) is not complied with—

(a) if the seller faxed the documents—the seller; or

(b) if the seller's agent faxed the documents—the seller's agent;

commits an offence.

Maximum penalty—200 penalty units.

(5) It is a defence to a prosecution for an offence against subsection (4) for the seller or the seller's agent to prove that the seller or the seller's agent gave notice to the proposed buyer or the proposed buyer's agent under section 366C.

366A Warning statement if proposed relevant contract is given by electronic communication other than fax

(1) This section applies if a proposed relevant contract is given to a proposed buyer or the proposed buyer's agent by electronic communication, other than fax, for signing, whether or not the proposed relevant contract has been signed by the seller.

(2) If the proposed relevant contract does not relate to a unit sale, the seller or the seller's agent must ensure that the electronic communication contains—

(a) a message that includes a clear statement directing the proposed buyer's attention to the warning statement and the proposed relevant contract; and

(b) a single document, consisting only of the warning statement and the proposed relevant contract, that is protected against unauthorised change, with the warning statement appearing as the first or top page of the document.

(3) If the proposed relevant contract does relate to a unit sale, the seller or the seller's agent must ensure that the electronic communication contains—

(a) a message that includes a clear statement directing the proposed buyer's attention to the warning statement, the information sheet, the proposed relevant contract and, if the disclosure statement has not already been given to the buyer or the buyer's agent, the disclosure statement; and

(b) a single document, consisting only of the warning statement, the information sheet and the proposed relevant contract, that is protected against unauthorised change, with the warning statement appearing as the first or top page of the document and the information sheet appearing immediately after the warning statement.

(4) Despite subsection (3)(b), the disclosure statement may form part of the single document mentioned in that provision if it does not appear before the information sheet.

(5) If subsection (2) or (3) is not complied with—

(a) if the seller gave the electronic communication—the seller; or

(b) if the seller's agent gave the electronic communication—the seller's agent;

commits an offence.

Maximum penalty—200 penalty units.

(6) It is a defence to a prosecution for an offence against subsection (5) for the seller or the seller's agent to prove that the seller or the seller's agent gave notice to the proposed buyer or the proposed buyer's agent under section 366C.

366B Warning statement if proposed relevant contract is given in another way

(1) This section applies if a proposed relevant contract is given to a proposed buyer or the proposed buyer's agent for signing in a way other than by electronic communication.

(2) The seller or the seller's agent must ensure that the proposed relevant contract has attached a warning statement and, if the proposed relevant contract relates to a unit sale, an information sheet with the warning statement appearing as its first or top page and any information sheet appearing immediately after the warning statement.

(3) If the proposed relevant contract does not comply with subsection (2)—

(a) if the seller gave the proposed relevant contract—the seller; or

(b) if the seller's agent gave the proposed relevant contract—the seller's agent;

commits an offence.

Maximum penalty—200 penalty units.

(4) If the seller or the seller's agent hands the proposed relevant contract to the proposed buyer, the seller or the seller's agent must direct the proposed buyer's attention to the warning statement and, if the proposed relevant contract relates to a unit sale, the information sheet and any disclosure statement.

Note—

A contravention of this subsection is not an offence. Under section 366D(3), in the circumstances of this subsection a warning statement is of no effect unless it is signed by the buyer.

(5) Subsection (6) applies if the seller or the seller's agent gives the proposed relevant contract to the proposed buyer or the proposed buyer's agent in a way other than by handing the proposed contract to the proposed buyer or the proposed buyer's agent.

(6) The seller or the seller's agent must include with the proposed relevant contract a statement directing the proposed buyer's attention to the warning statement and, if the proposed relevant contract relates to a unit sale, the information sheet and any disclosure statement.

Maximum penalty—200 penalty units.

(7) It is a defence to a prosecution for an offence against subsection (3) or (6) for the seller or the seller's agent to prove that the seller or the seller's agent gave notice to the proposed buyer or the proposed buyer's agent under section 366C.

366C Error in process may be corrected before relevant contract is signed

(1) This section applies if, before a proposed relevant contract has been signed by both the seller and the proposed buyer—

(a) the seller or the seller's agent fails to comply with a requirement under this part for the proposed relevant contract; or

(b) the use of an electronic transaction for the proposed relevant contract does not comply with the *Electronic Transactions (Queensland) Act 2001*.

Note—

See the *Electronic Transactions (Queensland) Act 2001*, section 11 for a requirement about consent and section 14 for rules about requirements for signatures when using electronic communications.

(2) For the defence mentioned in section 366(5), 366A(6) or 366B(7), the seller or the seller's agent may notify the proposed buyer or the proposed buyer's agent of the failure to comply at any time before the proposed relevant contract has been signed by both the seller and the proposed buyer.

(3) The notice must identify the failure to comply and—

(a) state that the proposed relevant contract is withdrawn; and

(b) advise whether new documents complying with the requirements of this part will be given to the proposed buyer or the proposed buyer's agent.

366D Content and effectiveness of warning statements

(1) The warning statement for a proposed relevant contract or relevant contract must include the following information—

(a) the relevant contract is subject to a cooling-off period;

(b) when the cooling-off period starts and ends;

(c) a recommendation that the buyer or proposed buyer seek independent legal advice about the proposed relevant contract or relevant contract before the cooling-off period ends;

(d) what will happen if the buyer terminates the relevant contract before the cooling-off period ends;

(e) the amount or the percentage of the purchase price that will not be refunded from the deposit if the relevant

contract is terminated before the cooling-off period ends;

(f) a recommendation that the buyer or proposed buyer seek an independent valuation of the property before the cooling-off period ends;

(g) if the seller under the proposed relevant contract or relevant contract is a property developer, that a person who suffers financial loss because of, or arising out of, the person's dealings with a property developer or the property developer's employees can not make a claim against the claim fund.

(2) A statement purporting to be a warning statement is of no effect unless the words on the statement are presented in substantially the same way as the words are presented on the approved form.

Example—

If words on the approved form are presented in 14 point font, the words on the warning statement must also be presented in 14 point font.

(3) If the seller or the seller's agent hands a proposed relevant contract to the buyer for signing, a warning statement is of no effect unless the buyer signs the warning statement before signing the proposed relevant contract.

(4) If a proposed relevant contract is given to the buyer for signing and subsection (3) does not apply, a warning statement is of no effect unless the buyer signs the warning statement.

(5) For subsection (3), the buyer's signature on the warning statement is taken to be proof that the buyer signed the warning statement before signing the proposed relevant contract unless the contrary is proved.

367 Buyer's rights if a warning statement is not given or is not effective

(1) This section applies if—

(a) a warning statement requirement for a proposed relevant contract is not complied with and notice is not given under section 366C; or

(b) a warning statement is of no effect under section 366D(2), (3) or (4).

(2) The buyer under a relevant contract may terminate the relevant contract at any time before the relevant contract settles by giving signed, dated notice of termination to the seller or the seller's agent.

(3) The notice of termination must state that the relevant contract is terminated under this section.

(4) If the relevant contract is terminated, the seller must, within 14 days after the termination, refund any deposit paid under the relevant contract to the buyer.

Maximum penalty—200 penalty units.

(5) If the seller, acting under subsection (4), instructs a licensee acting for the seller to refund the deposit paid under the relevant contract to the buyer, the licensee must immediately refund the deposit to the buyer.

Maximum penalty—200 penalty units.

(6) If the relevant contract is terminated, the seller and the person acting for the seller who prepared the relevant contract are liable to the buyer for the buyer's reasonable legal and other expenses incurred by the buyer in relation to the relevant contract after the buyer signed the relevant contract.

(7) If more than 1 person is liable to reimburse the buyer, the liability of the persons is joint and several.

(8) An amount payable to the buyer under this section is recoverable as a debt.

(9) In this section—

warning statement requirement, for a proposed relevant contract, means—

(a) if the proposed relevant contract is sent by fax—a requirement to comply with section 366(2) or (3); or

(b) if the proposed relevant contract is given by electronic communication other than fax—a requirement to comply with section 366A(2) or (3); or

(c) if the proposed relevant contract is given in a way other than by electronic communication—a requirement to comply with section 366B(2), (4) or (6).

Part 3 Cooling-off period

368 Terminating relevant contract during cooling-off period

(1) A buyer under a relevant contract who has not waived the cooling-off period for the relevant contract may terminate the relevant contract at any time before the cooling-off period ends by giving a signed, dated notice to the seller or the seller's agent indicating that the buyer terminates the relevant contract.

(2) If notice of termination is given under subsection (1), the relevant contract is at an end.

(3) The seller must, within 14 days after the relevant contract is terminated, refund any deposit paid under the relevant contract to the buyer less the amount of the termination penalty.

Maximum penalty—200 penalty units.

(4) An amount payable to the buyer under subsection (3) is recoverable as a debt.

369 Waiving cooling-off period

(1) A buyer who proposes to enter into a relevant contract may waive the cooling-off period for the relevant contract by giving the seller under the proposed relevant contract or the seller's agent a lawyer's certificate in the approved form.

(2) The buyer may waive the cooling-off period only if the certificate is given to the seller or the seller's agent before the buyer is bound by the relevant contract.

(3) The lawyer's certificate must be signed and dated by the lawyer giving the certificate and confirm the following by stating—

(a) the lawyer is independent of the seller, the seller's agents and anyone else involved in the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property and has no business, family or other relationship with any of those persons;

(b) the lawyer has not received, is not receiving, or does not expect to receive a benefit in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property, other than professional costs and disbursements payable by the buyer;

(c) the lawyer has explained to the buyer—

(i) the effect of the relevant contract; and

(ii) the purpose and nature of the certificate; and

(iii) the legal effect of the buyer giving the certificate to the seller or the seller's agent.

(4) In this section—

benefit means monetary or other benefit.

370 Shortening cooling-off period

(1) A buyer under a relevant contract may shorten the cooling-off period for the relevant contract by giving the seller under the relevant contract or the seller's agent a lawyer's certificate in the approved form.

(2) The lawyer's certificate must be signed and dated by the lawyer giving the certificate and confirm the following by stating—

(a) the lawyer is independent of the seller, the seller's agents and anyone else involved in the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property and has no business, family or other relationship with any of those persons;

(b) the lawyer has not received, is not receiving, or does not expect to receive a benefit in connection with the sale, or

for promoting the sale, or for providing a service in connection with the sale, of the property, other than professional costs and disbursements payable by the buyer;

(c) the lawyer has explained to the buyer—

(i) the effect of the relevant contract; and

(ii) the purpose and nature of the certificate; and

(iii) the legal effect of the buyer giving the certificate to the seller or the seller's agent.

(3) The giving of a lawyer's certificate under this section is effective to shorten the period to 5p.m. (or another stated time) on the day stated in the certificate.

(4) In this section—

benefit means monetary or other benefit.

Part 4 Accounting requirements for relevant contracts

371 Application of pt 4

This part applies if—

(a) the seller under a relevant contract is a property developer; and

(b) a relevant contract provides for the payment by the buyer under the relevant contract of an amount (***part payment***) for the purchase of property; and

(c) the buyer is not entitled under the relevant contract to receive a registrable instrument of transfer of the property in exchange for the part payment.

Example of part payment—

A deposit payable under the relevant contract.

Note—

A real estate agent is required to deal with part payments under chapter 12, part 1.[117]

372 Part payments must be paid to particular persons

(1) The part payment must be paid directly to—

(a) the public trustee; or

(b) a solicitor within the meaning of the *Trust Accounts Act 1973*, section 4; or

(c) a real estate agent;

within 3 business days after the amount is paid by the buyer.

(2) If the property developer or a property developer director conducting the business of the property developer receives a part payment and fails to comply with subsection (1), the developer or director commits an offence.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(3) A provision of the relevant contract is void if it provides for payment of the part payment other than in accordance with subsection (1).

(4) A provision of an instrument made in connection with the relevant contract is void if it provides for payment of the part payment other than in accordance with subsection (1).

373 Part payment to be held in trust

(1) The part payment must be held—

(a) if the part payment is paid to the public trustee, by the public trustee in a trust account kept for the purposes of this Act by the public trustee; or

(b) if the part payment is paid to an individual, by the individual in a trust account kept for the purposes of this Act by—

117 Chapter 12 (Accounts and funds), part 1 (Trust accounts)

(i) the individual; or

(ii) if the individual is a member of a firm or partnership, the firm or partnership of which the individual is a member.

(2) The part payment must be dealt with by the public trustee, individual, firm or partnership in accordance with the law governing the operation of the public trustee's, individual's, firm's or partnership's trust account.

Chapter 12 Accounts and funds

Part 1 Trust accounts

Division 1 Application of pt 1

374 Pt 1 applies only to principal licensees

This part applies to principal licensees, other than a principal licensee who is a property developer.

Division 2 Opening trust accounts

375 Notice before opening account

(1) Before opening a general trust account or special trust account, a licensee must give the chief executive written notice stating—

(a) the licensee's intention to open the account; and

(b) for a general trust account, the office or branch of an approved financial institution within the State where the licensee proposes to open the account; and

(c) for a special trust account, the office or branch of a financial institution within the State where the licensee proposes to open the account; and

(d) whether the account is to be a general trust account or special trust account.

Maximum penalty—200 penalty units.

Note—

A special trust account is a trust account created under section 380 in which an amount is held for investment at the direction of both parties to the sale.

(2) The chief executive must give the licensee a written acknowledgment of the notice.

(3) Before opening the account, the licensee must give the manager or other officer in charge of the institution's office or branch a copy of the chief executive's acknowledgment.

Maximum penalty for subsection (3)—200 penalty units.

376 Account's name

(1) The licensee opening a general trust account must ensure that the account's name includes the words 'trust account'.

Maximum penalty—200 penalty units.

(2) The licensee opening a special trust account must ensure that the account's name includes the words 'special trust account'.

Maximum penalty—200 penalty units.

377 Notice of account's opening, closing or name change

(1) A licensee must immediately give the chief executive written notice if the licensee—

(a) opens a general trust account or special trust account; or

(b) changes the name of a general trust account or special trust account; or

(c) closes a general trust account or special trust account.

Maximum penalty—200 penalty units.

(2) The written notice must include—

(a) the name of the financial institution where the account is or was kept; and

(b) the account name; and

(c) the identifying number of the financial institution;[118] and

(d) the trust account number.

Division 3 Dealing with trust money

Subdivision 1 Payments to trust accounts

378 Application

(1) Sections 379 and 380 apply if an amount is received by a licensee—

(a) for a transaction; or

(b) with a written direction for its use.

Example of paragraph (b)—

An amount received by a real estate agent with a written direction to use it for advertising or marketing by the agent or another person.

(2) In this section—

amount, received by a licensee for a transaction—

(a) includes deposit and purchase monies for the transaction; but

(b) does not include an amount payable to the licensee in relation to the transaction in refund of an expense the licensee was authorised to incur and did incur and for which the licensee holds a receipt.

118 This is commonly referred to as the bank state branch number.

379 Dealing with amount on receipt

A licensee must, immediately on receiving the amount—

(a) pay it to the licensee's general trust account; or

(b) if section 380(1) applies, invest it under section 380(2).

Example of paragraph (a)—

A licensee who collects an amount of rent for a property owner must pay the amount to the licensee's general trust account before the money can be paid to the owner.

Maximum penalty—200 penalty units or 3 years imprisonment.

380 Investments

(1) A licensee may invest the amount under subsection (2) if—

(a) the licensee receives the amount for a sale; and

(b) the sale is to be completed on a day that is—

(i) stated in the contract or ascertainable on the day the contract is entered into; and

(ii) more than 60 days after the amount is received; and

(c) the amount is received with a direction from all parties to the sale that it be invested.

(2) The licensee must pay the amount as required by the direction to a special trust account with a branch of a financial institution within the State operated for the investment of the amount.

Maximum penalty for subsection (2)—200 penalty units or 3 years imprisonment.

381 No other payments to trust account

(1) A licensee must not pay to a trust account an amount other than an amount that must be paid to the account under section 379 or 380.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) However, if the licensee receives an amount consisting of trust money and other money (***non-trust money***) that can not be divided, the licensee must—

(a) pay the whole amount to the licensee's general trust account; and

(b) draw the non-trust money from the account within 14 days after the money becomes available for drawing.

Example of amount consisting of trust money and non-trust money—

A real estate agent receives a single cheque for rent and services provided by the licensee, including, for example, television rental.

Maximum penalty—200 penalty units or 1 year's imprisonment.

382 Multiple licence holders

A licensee who holds more than 1 licence is not required to keep a general trust account for each licence.

383 Trust money not available to licensee's creditors

An amount paid, or required to be paid, to a trust account under this division can not be—

(a) used for payment of the debt of a creditor of a licensee; or

(b) attached or taken in execution under a court order or process by a creditor.

Subdivision 2 Payments from trust accounts

384 When payments may be made from trust accounts

(1) An amount paid to a trust account must be kept in the account until it is paid out under this Act.

Maximum penalty—200 penalty units or 3 years imprisonment.

(2) An amount may be paid from a trust account only in a way permitted under this Act.

Maximum penalty—200 penalty units or 3 years imprisonment.

385 Permitted drawings from trust accounts

(1) A licensee may draw an amount from the licensee's trust account to pay the licensee's transaction fee or transaction expenses in relation to a transaction only if—

(a) the amount is drawn against the transaction fund for the transaction; and

(b) the licensee is authorised to draw the amount under this section.

Maximum penalty—200 penalty units or 3 years imprisonment.

(2) The licensee is authorised—

(a) to draw an amount from the transaction fund to pay a transaction expense when the expense becomes payable; and

(b) when the transaction is finalised, to draw an amount from the transaction fund that is equal to the difference between—

(i) the balance of the transaction fund; and

(ii) the total of the licensee's transaction fee and any outstanding transaction expense;

to pay the person entitled to the amount or in accordance with the person's written direction; and

Example of when transaction is finalised—

the settlement of a contract for the sale of property or the termination of the contract

(c) to draw the licensee's transaction fee from the transaction fund when the amount, if any, mentioned in paragraph (b) has been paid and when the transaction is finalised.

(3) For subsection (2)(b) or (c), if a dispute about the transaction fund arises, the transaction is not taken to be finalised until the

licensee is authorised to pay out the transaction fund under section 388.[119]

(4) The licensee must pay an amount mentioned in subsection (2)(b) to the person entitled to it or in accordance with the person's written direction—

(a) if the person asks, in writing, for the balance—within 14 days after receiving the request; or

(b) if the person has not asked, in writing, for the balance—within 42 days after the person first had the right to the balance.

Maximum penalty—200 penalty units or 3 years imprisonment.

(5) In this section—

transaction expenses means the expenses the licensee is authorised to incur in connection with the performance of the licensee's activities for a transaction.

transaction fee means the fees, charges and commission payable for the performance of the licensee's activities for a transaction.

transaction fund means the amount held in a licensee's trust account for the transaction.

Subdivision 3 Other trust account obligations

386 Accounting to clients

(1) A licensee must account as required under this section to the person (***client***) who appoints the licensee to perform an activity for all amounts received in relation to a transaction, including an amount mentioned in subsection (2)(c).

Maximum penalty—200 penalty units or 3 years imprisonment.

(2) The account must be in writing and state—

119 Section 388 (When amount in dispute may be paid)

(a) the amounts received in relation to the transaction; and

(b) how the amounts were or are to be paid out; and

(c) the source and the amount of any rebate, discount, commission or benefit that the licensee received—

(i) in relation to any expenses that the licensee incurred for the person in connection with the performance of a service; or

(ii) for referring the person to someone else for services in connection with the transaction.

(3) The licensee must give the client the account—

(a) if the client asks, in writing, for the account—within 14 days after receiving the request; or

(b) if the client has not asked, in writing, for the account—within 42 days after the transaction is finalised.

Division 4 Disputes about trust money

387 Application of div 4

(1) This division applies if—

(a) a licensee holds a transaction fund for a transaction under section 385; and

(b) before the transaction fund is paid out under section 385, the licensee receives written notice from a party to the transaction that ownership of the fund or part of the fund is in dispute (the ***amount in dispute***).

(2) In subsection (1)—

party, to a transaction, does not include a licensee acting for a party to the transaction.

388 When amount in dispute may be paid

The licensee must not pay out the amount in dispute unless the licensee—

(a) receives written notice—

(i) from all parties to the transaction stating the person who is entitled to the amount in dispute; or

(ii) a legal proceeding has been started in a court to decide who is entitled to the amount in dispute; or

(b) pays the amount under section 390(3).

Maximum penalty—200 penalty units or 3 years imprisonment.

389 Where amount must be paid if notice given

The licensee must pay the amount in dispute immediately—

(a) if notice under 388(a)(i) is received—to the person stated to be entitled to the amount or in accordance with the person's direction; or

(b) if notice under section 388(a)(ii) is received—to the court in which the proceeding was started.

Maximum penalty—200 penalty units or 3 years imprisonment.

390 Dealing with amount if no notice

(1) This section applies if the licensee does not receive a notice under section 388 within 30 days after receiving notice of the dispute.

(2) The licensee must, within 7 days after the end of the 30 day period, give all parties to the transaction a written notice that—

(a) 30 days after the notice is given, the licensee will pay the amount in dispute to a stated person who the licensee believes is entitled to receive it if the licensee has not received a notice under section 388; or

(b) the licensee can not decide who is entitled to the amount and is keeping it in the licensee's trust account until the licensee receives notice under section 388.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) If the licensee gives a notice under subsection (2)(a), the licensee may pay the amount to the person stated in the notice if the licensee does not receive a notice under section 388 within 30 days after the notice under subsection (2)(a) is given.

Part 2 Audit requirements

Division 1 Preliminary

391 Definitions for pt 2

In this part—

approved auditor means a person who is approved by the chief executive under section 394 to audit the licensee's trust accounts.

auditor means an approved auditor or a qualified auditor.

qualified auditor means a person who is—

(a) registered as an auditor under the Corporations Act;[120] or

(b) a member of CPA Australia who is entitled to use the letters 'CPA' or 'FCPA'; or

(c) a member of The Institute of Chartered Accountants in Australia who is entitled to use the letters 'CA' or 'FCA'; or

(d) a member of the National Institute of Accountants who is entitled to use the letters 'MNIA', 'FNIA', 'PNA' or 'FPNA'.

120 See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers).

Division 2 Provisions about auditors

392 Principal licensee must appoint auditor

(1) A principal licensee who is required under this Act to keep a trust account must appoint an auditor to audit the trust accounts kept or to be kept by the licensee under this Act.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) If the licensee is unable to appoint a qualified auditor to audit the licensee's trust accounts, the chief executive, if asked by the licensee, may approve another person to audit the licensee's trust accounts.

393 Application for approval as auditor

(1) A person may apply to the chief executive to be an approved auditor for a stated licensee.

(2) The application must—

(a) be made in the approved form to the chief executive; and

(b) establish the person's qualifications to be an approved auditor; and

(c) be accompanied by—

(i) a request by the stated licensee that the person be approved as the auditor to audit the licensee's trust accounts; and

(ii) evidence that the person holds current professional indemnity insurance in an amount not less than the amount prescribed under a regulation.

394 Chief executive to consider application

(1) The chief executive must consider the application and approve, or refuse to approve, the person as an approved auditor for a stated licensee.

(2) The chief executive may approve the person as an approved auditor if the chief executive is satisfied the person—

(a) is a suitable person to be an approved auditor; and

(b) has at least a diploma level tertiary qualification in accounting with an auditing component; and

(c) holds current professional indemnity insurance in an amount not less than the amount prescribed under a regulation.

(3) The chief executive may approve a person who meets the requirements of subsections (2)(a) and (c) but does not have the minimum qualification mentioned in subsection (2)(b) if the chief executive is satisfied—

(a) the person resides in a remote locality; and

(b) the person has the necessary skills or experience and a sufficient knowledge of this Act to perform the functions of an approved auditor; and

(c) there is no qualified auditor available to serve the needs of the locality.

(4) If the chief executive decides to refuse to approve the person as an approved auditor, the chief executive must give the person an information notice within 14 days after the decision is made.

(5) A person is not a ***suitable person*** for this section if the person—

(a) is affected by bankruptcy action; or

(b) is a person who has been convicted of an indictable offence involving dishonesty; or

(c) has been found guilty of professional misconduct or unprofessional conduct by CPA Australia, the Institute of Chartered Accountants in Australia or the National Institute of Accountants.

395 When approval of person as approved auditor ends

The approval of a person as an approved auditor ends if—

(a) the person's appointment to audit the trust accounts of the licensee for whom the person is the approved auditor ends; or

(b) the person is no longer a suitable person under section 394; or

(c) the person no longer holds current professional indemnity insurance in an amount not less than the amount prescribed under a regulation; or

(d) the chief executive withdraws approval of the person as the approved auditor for the licensee under section 398.

396 Notice and evidence of auditor's appointment

(1) This section applies if—

(a) a principal licensee appoints an auditor; and

(b) the licensee has not already advised the chief executive of the auditor's name and address under section 25.[121]

(2) The licensee must, within 1 month after the appointment, give the chief executive—

(a) written notice of the auditor's name and address; and

(b) evidence that the auditor has accepted the appointment.

Maximum penalty—200 penalty units.

397 Steps to be taken if auditor's appointment ends

(1) If a licensee's auditor resigns or the licensee ends the auditor's appointment, both the auditor and the licensee must immediately notify the chief executive of—

(a) the resignation or ending of the appointment; and

(b) the reasons for it.

(2) An auditor or licensee who is required to give the chief executive notice under subsection (1) and fails to give the notice commits an offence.

Maximum penalty—200 penalty units.

(3) The licensee must appoint another auditor and, unless the licensee has a reasonable excuse, within 1 month after the

121 Section 25 (Applicant intending to carry on business to advise name of auditor)

resignation or ending of the appointment mentioned in subsection (1) takes effect, give the chief executive—

(a) written notice of the auditor's name and address; and

(b) evidence that the auditor has accepted the appointment.

Maximum penalty—200 penalty units.

(4) If a licensee's auditor dies, the licensee must—

(a) as soon as the licensee becomes aware of the death, notify the chief executive of the death; and

(b) unless the licensee has a reasonable excuse, within 1 month after becoming aware of the death, appoint another auditor and give the chief executive—

(i) written notice of the auditor's name and address; and

(ii) evidence that the auditor has accepted the appointment.

Maximum penalty—200 penalty units.

398 Chief executive may withdraw approval as approved auditor

(1) The chief executive may withdraw the approval of a person as an approved auditor if the chief executive is satisfied that the person—

(a) has not audited the licensee's trust accounts in accordance with generally accepted standards of professional competency; or

(b) has failed to detect or report material irregularities in the operation of the licensee's trust accounts; or

(c) has not properly performed the person's functions under this Act.

(2) The chief executive must give the person written notice—

(a) stating that the chief executive proposes to withdraw the person's approval as an approved auditor for a stated licensee on a ground mentioned in subsection (1); and

(b) outlining the facts and circumstances forming the basis for the ground; and

(c) inviting the person to show, within a stated time of at least 21 days, why the approval should not be withdrawn.

(3) If the chief executive decides the ground still exists after considering any written representations within the stated time, the chief executive must—

(a) withdraw the person's approval; and

(b) give an information notice to the person and the licensee for whom the person is the approved auditor within 14 days after the decision is made.

399 Chief executive may make information available to supervisory bodies

(1) The chief executive may report a matter about a qualified auditor to the Australian Securities and Investment Commission or a prescribed entity of which the auditor is a member if the chief executive believes, on reasonable grounds, that the auditor—

(a) has not audited a licensee's trust accounts in accordance with generally accepted standards of professional competency; or

(b) has failed to detect or report material irregularities in the operation of a licensee's trust accounts; or

(c) has not properly performed the auditor's functions under this Act.

(2) The chief executive may make any information in the chief executive's possession available to the commission or entity for the purposes of any investigation conducted by the commission or entity.

(3) In this section—

prescribed entity means CPA Australia, the Institute of Chartered Accountants in Australia or the National Institute of Accountants.

Division 3 Audit of trust accounts

400 Definitions for div 3

In this division—

audit month, for a licensee's licence, means—

(a) the eighth month after the month in which the licence was first issued to the licensee and the same month in each subsequent year; or

(b) another month specified by the chief executive by written notice given to the licensee.

Example of paragraph (a)—

If a licensee's licence was first issued to the licensee in January, the audit month for the licensee's licence is September.

audit period means—

(a) the 12 month period in each year ending on the last day of the audit month; or

(b) another period decided by the chief executive, either generally, by gazette notice, or by written notice given to a licensee.

audit report, for a licensee, means a report from the licensee's auditor under section 407.[122]

trust account means a general trust account or a special trust account.

401 What trust accounts must be audited

(1) A licensee's trust accounts must be audited for each audit period for which the licensee carried on business as a licensee and operated a trust account.

(2) A licensee's trust accounts need not be audited for an audit period if the licensee gives the chief executive a statutory declaration that the licensee did not operate a trust account during the period.

122 Section 407 (Audit reports)

402 Time for audit

(1) This section applies to each audit period for which a licensee's trust accounts must be audited.

(2) The licensee must, within 4 months after the last day of the audit month in each year or the extended period allowed by the chief executive under subsection (3)—

(a) have the licensee's trust accounts for the last audit period audited by the licensee's auditor; and

(b) file the auditor's signed original audit report with the chief executive.

Maximum penalty—200 penalty units or 2 years imprisonment.

Note—

The auditor must give the licensee a signed original audit report under section 407 (Audit reports).

(3) The chief executive may extend the time mentioned in subsection (2) if an auditor or licensee applies in writing to the chief executive for the extension.

(4) The application must state the grounds on which the extension is sought.

(5) If a licensee is charged with an offence relating to a failure to file an audit report, it does not matter that the contravention happened without the licensee's authority or contrary to the licensee's instructions.

403 Auditors—functions

(1) An auditor has the following functions under this division—

(a) to inspect and audit, in each audit period, the trust accounts of each licensee by whom the auditor is engaged;

(b) to make an audit report for the licensee for the audit period;

(c) if the licensee is a licensee for the whole of the audit period—to make 2 unannounced examinations of the licensee's trust accounts during the audit period;

(d) if the licensee is a licensee for less than the whole audit period, but more than 6 months of the period—to make 1 unannounced examination of the licensee's trust accounts during the audit period.

(2) An auditor must not make an unannounced examination of a licensee's trust accounts within 2 months after the last day of the audit period or another unannounced examination.

404 Auditor's advice to chief executive

An auditor must immediately give written notice to the chief executive if the auditor—

(a) can not report that a trust account has been satisfactorily kept under this Act; or

(b) finds, on an unannounced examination of a licensee's trust accounts, an irregularity in relation to an account that ought to be brought to the chief executive's notice.

Maximum penalty—200 penalty units or 1 year's imprisonment.

405 Auditor may ask licensee to produce other accounts

(1) This section applies if an auditor considers, to enable the auditor to decide whether a licensee's trust accounts have been satisfactorily kept under this Act, it is necessary—

(a) to examine a general account of the licensee; or

(b) to be given information about the accounts.

(2) The auditor may ask the licensee to produce the general account or give the information.

(3) If the licensee refuses, the auditor must immediately give written notice to the chief executive.

Maximum penalty for subsection (3)—200 penalty units or 1 year's imprisonment.

406 Audit on ceasing to be licensee or carrying on business

(1) This section applies if—

(a) a licensee must keep trust accounts; and

(b) the licensee stops being a principal licensee.

(2) The licensee must, within 2 months after the licensee stops being a principal licensee—

(a) have the licensee's trust accounts audited by the licensee's auditor for the period—

(i) starting on the day immediately after the end of the period covered by the last audit of the trust accounts or, if the trust accounts have not previously been audited, the day on which the licensee was first required to keep trust accounts; and

(ii) ending on the day the licensee stops being a principal licensee; and

(b) file the auditor's signed original audit report with the chief executive.

Maximum penalty—200 penalty units or 2 years imprisonment.

407 Audit reports

(1) An auditor who audits a licensee's trust accounts must give the licensee an original signed audit report under this section.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) The auditor must include the following in the report—

(a) the audit period for which the report is made;

(b) the name and number of each trust account audited;

(c) the name of the financial institution, the office or branch of the institution where each trust account was kept and the identifying number of the office or branch;

(d) the licensee's name and—

(i) if the licensee is a corporation—the name of each of its licensed directors during the audit period; and

(ii) if the licensee carried on business under a registered business name—the business name and the names of any persons with whom the licensee carried on the business;

(e) each place where the licensee carried on business as a licensee;

(f) a statement about whether each trust account has been satisfactorily kept under this Act;

(g) a statement specifying the day and result of each unannounced examination for the audit period under section 403(1);[123]

(h) a statement about whether the auditor has audited the licensee's general account;

(i) a statement about whether any trust account has been overdrawn;

(j) a statement about whether a trust creditor's ledger account has been overdrawn;

(k) a statement about whether, for each month during the audit period—

(i) each trust account cash book was reconciled with the bank balance and trust ledger; and

(ii) an analysis was made showing the name of each person for whom an amount was held and the amount held for each person;

(l) the serial numbers of the trust receipts used during the audit period and the unused trust receipts produced to the auditor;

(m) particulars of the amounts held in trust for more than 3 months by the licensee at the last day of the audit period;

(n) a statement that each trust account cash book has been reconciled with the bank balance of the trust account at the last day of the audit period;

123 Section 403 (Auditors—functions)

(o) a copy of the reconciliation of the trust account cash book and the bank balance of the trust account at the last day of the audit period;

(p) a statement about anything else about any trust account audited that the auditor considers should be reported to the chief executive.

Part 3 Claim fund

408 Claim fund

(1) The claim fund is established.

(2) The fund consists of—

(a) the amount standing to the credit of the auctioneers and agents fidelity guarantee fund established under the repealed Act immediately before the commencement of section 602;[124] and

(b) amounts payable to the fund under this Act; and

(c) other amounts transferred to the fund by the Treasurer.

(3) The Treasurer must transfer amounts to the fund, appropriated from time to time, to meet claims against the fund for any particular financial year.

(4) Accounts for the fund must be kept as part of the departmental accounts of the department.

(5) Amounts transferred to the fund must be deposited in a departmental financial-institution account of the department, but may be deposited in an account used for depositing other amounts of the department.

409 How fund may be applied

(1) The fund must be used to pay the amount of all claims allowed against the fund.

124 Section 602 (Act repealed)

(2) The Treasurer may transfer an amount from the fund to the consolidated fund.

410 Agreements with financial institutions

(1) The chief executive may enter into an agreement for the State with a financial institution about the keeping of general trust accounts by licensees.

(2) The chief executive may enter into an agreement only if—

(a) the Minister approves the chief executive entering into the agreement; and

(b) the financial institution is prescribed under a regulation as a financial institution to which this section applies.

(3) The agreement may provide for the following things—

(a) payment of interest on the whole or part of amounts held in licensees' general trust accounts to the consolidated fund;

(b) informing the chief executive of amounts held in licensees' general trust accounts;

(c) auditing licensees' general trust accounts;

(d) other things concerning licensees' general trust accounts.

(4) A financial institution may pay interest to the consolidated fund under an agreement.

Part 4 Freezing trust accounts and appointing receivers and special investigators

Division 1 Definitions

411 Definitions for pt 4

In this part—

account means—

(a) a trust account in a licensee's name with a financial institution; or

(b) an account in the licensee's name or in which the licensee has an interest with a financial institution; or

(c) another account to which trust money is deposited.

defalcation means stealing, embezzlement, omitting to account, misappropriation or misapplication, or other act about property punishable by imprisonment.

holder, of an account, means the licensee or other person authorised to operate on the account.

licensee includes a former licensee and the personal representative of a deceased licensee.

money includes—

(a) an instrument for the payment of an amount if the instrument may be paid to a financial institution; and

(b) security for money if title to the security is transferable by delivery.

receivership property, for a receiver, has the meaning given by section 420(2).[125]

trust money includes an amount that was, or ought, under this Act, to have been, deposited in a trust account required to be kept by a licensee.

125 Section 420 (How receivers are appointed)

trust property, for a licensee—

(a) means—

(i) property received by the licensee in trust that has not been given to the person entitled to it or someone else under the person's direction or according to law; or

(ii) property that, except for the appointment of a receiver, would be receivable for another person by the licensee in trust after the receiver's appointment; or

(iii) trust money; and

(b) includes computer hardware, software and discs, ledgers, books of account, vouchers, records, deeds, files and other documents used in connection with something mentioned in paragraph (a).

Division 2 Freezing licensees' accounts

412 Chief executive may freeze licensee's accounts in particular cases

(1) The chief executive may decide to give a direction under subsection (2) if it appears to the chief executive that any of the following persons has, or may have, stolen or misappropriated or misapplied trust money—

(a) a licensee;

(b) the person in charge of a licensee's business at a place;

(c) an employee of a licensee.

(2) The chief executive may direct, by signed writing, that—

(a) if a claim has been made against the fund concerning the trust money, all or part of the amount to the credit of a stated account be paid to the chief executive; or

(b) an amount must not be drawn from a stated account other than with the chief executive's written approval; or

(c) a stated account may be operated only under stated conditions.

(3) The direction must—

(a) be given to each holder of the account and the financial institution where the account is kept; and

(b) state the account to which it relates; and

(c) if it includes a direction under subsection (2)(c), state the conditions under which the account may be operated.

(4) If an amount is paid to the chief executive under subsection (2)(a), the chief executive must pay the amount to the fund.

413 Financial institution must comply with direction

(1) After the direction has been given to a financial institution, and until it is withdrawn, the financial institution must not—

(a) pay a cheque or other instrument drawn on the account stated in the direction unless the cheque or instrument is also signed by the chief executive; or

(b) give effect to another transaction on the account that is not authorised because of the direction.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence—200 penalty units or 1 year's imprisonment; or

(b) for a corporation—1000 penalty units.

(2) Subsection (1) applies whether or not a copy of the direction has been given to anyone else.

(3) For section 412(2)(b), the chief executive's signature on the cheque or other instrument is sufficient evidence of the chief executive's approval to draw an amount from the account to honour the cheque or other instrument.

(4) A manager or principal officer in charge of an office or branch of the financial institution where the account is kept, or another officer of the financial institution, must not knowingly contravene this section.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(5) A person to whom a direction is given does not incur a civil liability to another only because the person complies with the direction.

414 Account not to be operated unless chief executive allows

After the direction has been given to the holder of an account, and until it is withdrawn, the holder must not sign a cheque or other instrument drawn on an account stated in the direction unless the cheque or other instrument has first been signed by the chief executive or a person authorised by the chief executive to sign the cheque or instrument.

Maximum penalty—200 penalty units or 2 years imprisonment.

415 Chief executive may operate account

(1) This section applies if a holder of an account is unwilling to operate an account stated in a direction under section 412.

(2) The chief executive or a person authorised in writing by the chief executive (***authorised person***) may operate on the account.

(3) A statutory declaration made by the chief executive or authorised person to the effect that the account holder is unwilling to operate on the account is sufficient evidence to the licensee's financial institution of that fact.

416 Withdrawal of direction

(1) The chief executive may withdraw a direction given under section 412 at any time.

(2) If the direction is withdrawn, the chief executive must immediately give all persons who were given the direction a notice that the direction has been withdrawn.

(3) A direction stops having effect when it is withdrawn.

Division 3 Receivers

Subdivision 1 Appointment

417 When receiver may be appointed

(1) If the chief executive believes, on reasonable grounds, a defalcation has, or may have, been committed in relation to a licensee's trust account, the chief executive may appoint a receiver if—

(a) the licensee consents to the appointment; or

(b) the chief executive—

(i) gives the licensee written notice—

(A) stating that the chief executive proposes to appoint a receiver on the ground that a defalcation has, or may have, been committed in relation to the licensee's trust account; and

(B) outlining the facts and circumstances forming the basis for the ground; and

(C) inviting the licensee to show, within a stated time of at least 21 days, why the appointment should not be made; and

(ii) after considering any written representations given within the stated time, still considers the ground exists.

Note—

Under the *Judicial Review Act 1991*, part 4, a person aggrieved by an administrative decision of the chief executive can ask the chief executive to give a written statement of reasons for the decision, if they are not given. See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision) for what the chief executive must set out in the reasons.

(2) The chief executive may immediately appoint a receiver if the chief executive believes, on reasonable grounds, a person can not obtain payment or delivery of trust property held for the person by a licensee because of—

(a) the licensee's mental or physical infirmity; or

(b) the licensee's death; or

(c) the abandonment of the licensee's business; or

(d) the licensee's disqualification from holding a licence; or

(e) the cancellation or suspension of the licensee's licence; or

(f) a refusal to renew the licensee's licence; or

(g) the expiry of the licensee's licence.

418 Trust property over which receiver may be appointed

A receiver may be appointed over trust property—

(a) held by a licensee; or

(b) held by another person for a licensee; or

(c) recoverable by a licensee; or

(d) if a licensee is dead, that may be recoverable by the licensee's personal representative.

419 Who may be appointed

(1) The chief executive may appoint a person as a receiver only if satisfied the person is appropriately qualified to perform a receiver's functions.

(2) A person may be appointed as a receiver and a special investigator[126] over the same trust property.

420 How receivers are appointed

(1) The chief executive must appoint a receiver by signed notice.

(2) The notice must state the trust property (***receivership property***) over which the receiver is appointed.

(3) The appointment takes effect when the notice is signed.

126 See section 440 (Appointment of special investigator).

(4) The chief executive must give a copy of the notice to the licensee and the receiver as soon as practicable after the signing of the notice.

(5) If the licensee is a corporation, the licensee must give notice of the appointment to each person who was an executive officer of the corporation at the time the event giving rise to the appointment happened, unless the licensee has a reasonable excuse.

Maximum penalty for subsection (5)—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—100 penalty units; or

(b) for a corporation—500 penalty units.

Subdivision 2 Receiver's functions and powers

421 Receivers—functions

A receiver appointed under this division has the following functions—

(a) to take possession of receivership property;

(b) to manage receivership property;

(c) to receive claims against receivership property;

(d) if the licensee held receivership property in trust—

(i) to identify the person or persons who have the right to it; and

(ii) to distribute it under this division;

(e) to identify any defalcation that has, or may have, been committed;

(f) to report to the chief executive about a receivership.

422 Requiring information

(1) A receiver may ask a person to give the receiver information the receiver reasonably requires about receivership property.

(2) A person must give the receiver the information, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(3) It is a reasonable excuse for a person not to give information to a receiver if doing so might tend to incriminate the person.

423 Possession of receivership property

(1) A receiver may take or enter into possession of receivership property.

(2) As soon as practicable after taking or entering into possession of receivership property, the receiver must give a receipt for it to the person from whom the property was taken or who held possession of the property.

(3) The receiver must allow a person who would be entitled to the receivership property if it were not in the receiver's possession—

(a) to inspect it; or

(b) if it is a document, to take a copy of it.

(4) The receiver must return receivership property that the receiver is satisfied is not required for the receivership to the licensee or other person who has the right to it.

(5) The receiver may take or enter into possession of receivership property under subsection (1) despite a lien or other security over it claimed by any person.

(6) However, the taking or entry into possession does not affect the person's claim to the lien or other security against a person other than the receiver.

424 Orders for possession of receivership property

(1) This section applies if—

(a) a receiver requires a person in possession of receivership property to give possession of it to the receiver; and

(b) the person does not comply with the requirement.

(2) The receiver may apply to a court having jurisdiction for the recovery of debts up to the amount or value of the receivership property concerned for an order for possession of the property.

(3) On the application, the court may make any order it considers appropriate.

425 Enforcing orders

(1) This section applies if—

(a) a court makes an order under section 424 for possession of receivership property against a person; and

(b) the person has been given a copy of the order; and

(c) the person has not complied with the order.

(2) The court may make an order authorising a police officer, or the receiver or another person and a police officer—

(a) to enter stated premises or another place occupied by the person and search for the receivership property; and

(b) to seize the receivership property and move it to a place the receiver considers appropriate.

(3) The court may also make another order it considers appropriate.

426 Improperly withdrawing, destroying or concealing receivership property

A person must not—

(a) withdraw an amount or make a payment from an account with intent to defeat a receiver's functions; or

(b) destroy, conceal, move from 1 place to another place, give to another or place under another's control receivership property over which a receiver has been appointed.

Maximum penalty—200 penalty units or 2 years imprisonment.

427 Dealing with receivership property

(1) A receiver may deal with receivership property in the same way as the licensee may have lawfully dealt with the property.

(2) Without limiting subsection (1), the receiver may do the following—

(a) if the licensee had no general trust account, open a general trust account;

(b) claim or receive a debt owing to the licensee in connection with the receivership property;

(c) start or defend a proceeding concerning the receivership property for the licensee;

(d) engage a legal representative or other agent to give advice;

(e) engage employees or agents to help the receiver carry out the receiver's functions;

(f) if the licensee had power to sell or require the sale of the receivership property, sell or require the sale of the property.

428 Obstructing receivers

A person must not obstruct a receiver in the performance of the receiver's functions or the exercise of the receiver's powers under this subdivision.

Maximum penalty—200 penalty units or 1 year's imprisonment.

Subdivision 3 Distributing receivership property

429 Notice to claimants against receivership property

(1) The receiver must give notice to persons who may have a claim against receivership property.

(2) The notice may be given—

(a) by post; or

(b) by newspaper advertisement; or

(c) in another way the receiver reasonably thinks will bring the notice to the attention of persons who may have a claim to the receivership property.

(3) A notice must state a time, at least 1 month after the notice is given, for particulars and grounds of a claim against the receivership property to be given to the receiver.

(4) The claim must state—

(a) the event alleged to give rise to the claim; and

(b) when the event happened; and

(c) if the claimant was not immediately aware that the claimant suffered financial loss because of the event, when the claimant became aware of the financial loss; and

(d) all relevant particulars about the event and the financial loss; and

(e) the claimant's estimated financial loss.

(5) A claim is taken to have been made on the day the claim is given to the receiver even though the claimant is unable to state all of the particulars mentioned in subsection (4).

(6) The receiver may require the claimant to verify the claim, or part of the claim.

Example of verification—

Statutory declaration.

430 Access to documents

(1) The receiver must give a person who wishes to claim against receivership property reasonable access to documents held by the receiver to allow particulars and grounds of the claim to be given.

(2) The receiver must give the access free of charge.

431 Deciding claims

(1) The receiver must consider all claims against receivership property and decide whether each claim is allowable.

(2) The receiver may refuse to allow the person's claim against the receivership property if—

(a) the person was given notice under section 429; and

(b) particulars and grounds of the claim were not given within the time stated in the notice.

(3) The receiver must refuse to allow a person's claim against the receivership property if the receiver is satisfied that the person does not have a lawful claim against the property.

(4) If the receiver refuses a claim under subsection (2) or (3), the receiver must give the person written notice of the refusal.

432 Payment of claims

(1) This section applies if—

(a) a receiver has given notice under section 429(1); and

(b) the time for giving particulars and grounds of claims has ended; and

(c) the receiver has considered the claims against receivership property.

(2) The receiver may pay a claim allowed by the receiver only if the receivership property is enough to pay all claims allowed by the receiver.

(3) If the receivership property is not enough to pay all of the allowed claims, the receiver—

(a) may pay any part of the property that consists of money to the chief executive; and

(b) must give the claims the receiver has allowed and any documents in relation to the claims to the chief executive; and

(c) must give a report to the chief executive—

(i) stating that the receiver can not pay all of the claims allowed by the receiver; and

(ii) identifying the claims against the property that the receiver considers should be paid from the fund.

(4) Money paid to the chief executive under subsection (3) must be—

(a) paid to the fund; and

(b) paid from the fund under section 433(3)(b).

(5) In this section—

claim does not include a claim by the licensee.

433 Money not dealt with by receiver

(1) This section applies to receivership property consisting of money in the receiver's possession.

(2) The receiver must give the money to the chief executive if—

(a) the receiver has not dealt with it under this division; and

(b) the chief executive asks for it.

(3) Money given to the chief executive under subsection (2) must be paid to the fund and be paid from the fund in the following order—

(a) to reimburse claims paid from the fund in relation to the licensee;

(b) to pay unsatisfied claims against the fund in relation to the licensee;

(c) to pay claims by the licensee against the money.

Subdivision 4 Recovery of receivers' remuneration and costs

434 Recovery of remuneration and costs

(1) The following persons are liable to reimburse the chief executive for an amount paid to the receiver for the receiver's remuneration and costs—

(a) the licensee;

(b) if the licensee is a corporation, the executive officers of the corporation when the event in relation to which the chief executive appointed the receiver happened.

(2) If more than 1 person is liable to reimburse the chief executive, the liability of the persons is joint and several.

(3) The chief executive may recover an amount liable to be reimbursed under subsection (1) as a debt.

Subdivision 5 Ending receivership

435 Ending receiver's appointment

A receiver's appointment ends if—

(a) the receiver resigns by signed notice given to the chief executive; or

(b) the receiver or licensee applies to the chief executive to end the appointment and the chief executive approves the application; or

(c) the receiver dies; or

(d) the chief executive ends the appointment by signed notice given to the receiver.

436 Dealing with receivership property when appointment ends

(1) This section applies to receivership property if—

(a) the receiver's appointment ends; and

(b) the chief executive has not asked for the property under section 433.

(2) If, within 14 days after the end of the receiver's appointment, the chief executive appoints another person (***new receiver***) to be the receiver in the former receiver's place, the former receiver must—

(a) give the receivership property to the new receiver as soon as reasonably practicable; or

(b) if the chief executive gives the former receiver a direction about how to deal with the receivership property, comply with the direction.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(3) If a new receiver is not appointed within the 14 days, the former receiver must give the receivership property to the licensee or other person who has the right to it.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(4) However, the chief executive may direct the former receiver to destroy or give to the chief executive any part of the receivership property consisting of documents if the documents have not been given to the person entitled to them.

(5) The former receiver must comply with a direction under subsection (4).

Maximum penalty for subsection (5)—200 penalty units or 1 year's imprisonment.

437 Returns by receiver

(1) A receiver must give the chief executive a report about the receivership when the chief executive directs.

(2) The receiver must also give the chief executive a report when the receiver's appointment ends.

(3) The report must contain the information reasonably required by the chief executive.

(4) The receiver is not entitled to be paid for the receivership until reports required to be given under this section are given to the chief executive.

Subdivision 6 Miscellaneous

438 Receiver not personal representative

To prevent any doubt, a receiver of a deceased licensee, in performing the receiver's functions, is not to be taken to be the licensee's personal representative.

439 Receivership property free from execution or attachment

Receivership property can not be levied on or taken or attached under a judgment.

Division 4 Special investigators

440 Appointment of special investigator

(1) The chief executive may by written notice appoint a special investigator over a licensee's trust account if the chief executive considers the trust account has not been kept as required under this Act.

(2) The notice must state—

(a) the licensee's name and the trust account; and

(b) the terms on which the special investigator is appointed; and

(c) the special investigator's functions and powers.

(3) A copy of the notice must be given to the licensee.

(4) The chief executive may appoint a person as a special investigator only if the chief executive is satisfied the person is appropriately qualified to perform a special investigator's functions.

(5) An inspector may be appointed as a special investigator.

441 Special investigators—functions

A special investigator appointed under this division may perform any of the following functions stated in the investigator's notice of appointment—

(a) inspecting the licensee's trust accounts and records that relate to the trust accounts;

(b) preparing or constructing incomplete trust account records;

(c) performing other accounting tasks to establish the state of the trust account;

(d) reporting to the chief executive under section 444.

442 Special investigators—powers

(1) The chief executive may, by signed notice, give a special investigator any or all of an inspector's powers under chapter 15, part 2.[127]

(2) A special investigator's powers under subsection (1) end when the special investigator's appointment ends.

443 Licensee must comply with special investigator's lawful requests

(1) The licensee over whose trust account the special investigator is appointed must comply with a special investigator's lawful requests, unless the licensee has a reasonable excuse.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) The special investigator must advise the chief executive of any failure by the licensee to comply with a request.

444 Reports to chief executive

(1) A special investigator must report to the chief executive at the time, and in the way, required by the chief executive.

127 Chapter 15 (Enforcement), part 2 (Inspectors' powers)

(2) However, if the special investigator considers sufficient grounds exist to appoint a receiver, the special investigator must advise the chief executive immediately of the grounds.

445 Recovery of remuneration, costs or liabilities

(1) The following persons are liable to reimburse the chief executive for any amount paid to the special investigator for the investigator's remuneration and costs—

(a) the licensee over whose trust account the special investigator is appointed;

(b) if the licensee over whose trust account the special investigator is appointed is a corporation, the executive officers of the corporation when the event in relation to which the chief executive appointed the special investigator happened.

(2) If more than 1 person is liable to reimburse the chief executive, the liability of the persons is joint and several.

(3) The chief executive may recover an amount liable to be reimbursed under subsection (1) as a debt.

446 Ending special investigator's appointment

A special investigator's appointment ends if—

(a) the investigator resigns by signed notice given to the chief executive; or

(b) the investigator dies; or

(c) the investigator's notice of appointment states the appointment ends when an event happens and the event happens; or

(d) the chief executive ends the appointment by signed notice given to the investigator.

Chapter 13 Jurisdiction of tribunal

447 Definitions for ch 13

In this chapter—

former licensee means a person who held a licence under this or the repealed Act at any time within 3 years before a proceeding under this chapter is started involving the person.

former registered employee means a person who was a registered employee, or the holder of a certificate of registration under the repealed Act, at any time within 1 year before a proceeding under this chapter is started involving the person.

licensee includes a former licensee.

registered employee includes a former registered employee.

450 Jurisdiction

For this Act, the tribunal has the following jurisdiction—

(a) to hear and decide disciplinary matters involving licensees and registered employees;

(b) to hear and decide claims, other than minor claims, against the fund;

(c) to hear and decide applications under this Act relating to marketeers;

(d) to review decisions of the chief executive in relation to minor claims;

(e) to review decisions of the chief executive in relation to licensing and registration.

Chapter 14 Claims against the fund and other proceedings

Part 1 Preliminary

469 Definitions for ch 14

In this chapter—

claimant means a person who makes a claim against the fund.

claim notice see section 474(1).

complaint—

(a) for a disciplinary proceeding—see section 497(1);[128]

(b) for a marketeer proceeding—see section 500B(1).[129]

financial loss, suffered by a person, if evidenced by a judgment of a court, does not include interest awarded on the judgment.

licensee includes a former licensee and a person who is not licensed, but who acts as a licensee.

marketeering contravention means a contravention of any of the following by a relevant person—

(a) section 573A, 573B or 573C of this Act;

(b) section 69, 70, 72, 73 or 74 of the repealed Act.[130]

relevant person means—

(a) a licensee; or

(b) a licensee's employee or agent, or a person carrying on business with the licensee; or

128 Section 497 (Starting disciplinary proceedings)

129 Section 500B (How to start a proceeding)

130 For claims relating to offences mentioned in paragraph (b), see section 604 (Former fund).

(c) a person having charge or control, or apparent charge or control, of a licensee's registered office or business.

respondent see section 474(1).

469A What is the purchase of a *non-investment residential property*

A person purchases a ***non-investment residential property*** only if—

(a) the property is a residential property; and

(b) either of the following has been assessed in relation to the purchase—

(i) a concession, under the *Duties Act 2001,* chapter 2, part 9, for transfer duty;

(ii) a concession, under the repealed *Stamp Act 1894*, section 55A, for stamp duty.[131]

Part 2 Claims against the fund

Division 1 Who can claim

470 Claims

(1) A person may make a claim against the fund if the person suffers financial loss because of the happening of any of the following events—

(a) the contravention of any of the following provisions by a relevant person—

131 *Duties Act 2001*, chapter 2 (Transfer duty), part 9 (Concessions for homes)
Stamp Act 1894, section 55A (Duty relating to principal place of residence and first principal place of residence)

- section 144, 145 or 149(1)[132]
- section 183, 184 or 188(1)[133]
- section 221, 222 or 226(1)[134]
- section 233(2)[135]
- section 291 or 292[136]
- section 295(2)[137]
- section 302(4)[138]
- section 311[139]
- chapter 12, part 1[140]
- section 573[141]
- section 573A[142]
- section 573B[143]
- section 573C[144]
- section 574;[145]

132 Section 144 (Beneficial interest—options), 145 (Beneficial interest—other than options) or 149 (Notice to be given about vacant land)

133 Section 183 (Beneficial interest—options), 184 (Beneficial interest—other than options) or 188 (Notice to be given about vacant land)

134 Section 221 (Beneficial interest—options), 222 (Beneficial interest—other than options) or 226 (Notice to be given about vacant land)

135 Section 233 (Guarantee of title for motor vehicles)

136 Section 291 (Beneficial interest—options) or 292 (Beneficial interest—other than options)

137 Section 295 (Guarantee of title for motor vehicles)

138 Section 302 (Buyer's rights if notice not given or materially defective)

139 Section 311 (Consideration for used motor vehicle during cooling-off period)

140 Chapter 12 (Accounts and funds), part 1 (Trust accounts)

141 Section 573 (Wrongful conversion and false accounts)

142 Section 573A (Misleading conduct)

143 Section 573B (Unconscionable conduct)

144 Section 573C (False representations and other misleading conduct in relation to residential property)

145 Section 574 (False representations about property)

(b) a failure of an auctioneer to ensure a person who has bought a motor vehicle sold by the auctioneer (other than a motor vehicle sold for another auctioneer or a motor dealer) gains clear title to the vehicle at the time property in the vehicle passes to the buyer, whether or not the auctioneer contravenes section 233;

(c) a failure of a motor dealer to ensure a person who has bought a motor vehicle sold by or for the dealer gains clear title to the vehicle at the time property in the vehicle passes to the buyer, whether or not the motor dealer contravenes section 233 or 295;

(d) a contravention of any of the following provisions of the *Land Sales Act 1984* by a licensee appointed by the owner of land to which that Act applies or a relevant person employed by the licensee—

- section 9[146]
- section 11[147]
- section 12[148]
- section 21[149]
- section 23[150]
- section 24;[151]

(e) a stealing, misappropriation or misapplication by a relevant person of property entrusted to the person as agent for someone else in the person's capacity as a relevant person.

(2) A person may make a claim against the fund even if the person has made another claim for the loss against a receiver and the receiver has not considered or has refused the other claim.

146 *Land Sales Act 1984*, section 9 (Identification of land)

147 *Land Sales Act 1984*, section 11 (Contractual requirement re holding of money)

148 *Land Sales Act 1984*, section 12 (Trustee's duty)

149 *Land Sales Act 1984*, section 21 (Statement identifying proposed lot etc.)

150 *Land Sales Act 1984*, section 23 (Contractual requirement re holding of money)

151 *Land Sales Act 1984*, section 24 (Trustee's duty)

471 Persons who can not claim

(1) A person who suffers financial loss because of, or arising out of, the stealing, misappropriation or misapplication of an amount that a relevant person was directed to invest under section 380[152] can not make a claim against the fund.

(2) The following persons can not make a claim against the fund for any of the following financial losses—

(a) a seller of livestock who suffers financial loss in relation to the sale of the livestock if—

(i) the livestock are received by a relevant person from the seller; and

(ii) the relevant person and the seller agree in writing that the relevant person guarantees payment to the seller of the livestock's purchase price;[153]

(b) a relevant person who suffers financial loss in the course of performing an activity, or carrying on business, as a relevant person;

(c) a person holding a licence, however described, under a corresponding law that is similar to a licence under this Act who suffers financial loss in the course of performing an activity, or carrying on business, under the person's licence;

(d) a financier of a motor dealer's business who suffers financial loss because of financing the motor dealer's business;

(e) a person who suffers financial loss because the person guaranteed a motor dealer's obligations under a financial arrangement made by the motor dealer;

(f) a person who suffers financial loss because of a failure to disclose or make effective disclosure under section 138 or 268;[154]

152 Section 380 (Investments)

153 The practice in section 471(2)(a)(ii) is commonly referred to as 'del credere'.

154 Section 138 (Disclosures to prospective buyer) or 268 (Disclosures to prospective buyer)

(g) a person who suffers financial loss because of, or arising out of, the person's dealings with a property developer or the property developer's employees;

(h) a person who suffers financial loss because of, or arising out of, a marketeering contravention in relation to the purchase by the person of a residential property (other than a non-investment residential property).

471A Claims limited to realised loss

(1) A person may make a claim against the fund for financial loss relating to a non-investment residential property purchased by the person because of, or arising out of, a marketeering contravention only to the extent the loss is capital loss.

(2) Also, capital loss mentioned in subsection (1) may be claimed only if the loss has been realised as mentioned in section 488B.[155]

Division 2 Making and dealing with claims

472 General time limit for making claims

(1) This section applies to a claim against the fund other than a claim because of, or arising out of, a marketeering contravention in relation to the purchase of a non-investment residential property.

(2) A person may make the claim against the fund only if the person makes the claim within the earlier of the following—

(a) 1 year after the person becomes aware that the person has suffered financial loss because of the happening of an event mentioned in section 470(1);[156]

(b) 3 years after the happening of the event that caused the person's financial loss.

155 Section 488B (General test for working out loss)
See also section 634 (Application of amendments to claims).

156 Section 470 (Claims)

(3) However if the person starts a proceeding in a court to recover the person's financial loss within the time permitted to make a claim under subsection (2), the person may make the claim within 3 months after the proceeding in the court ends.

(4) Subsection (3) does not limit the time allowed under subsection (2) to make a claim.

(5) In this section—

court includes a small claims tribunal under the *Small Claims Tribunals Act 1973*.

472A Time limit for making particular claims relating to marketeering contraventions and non-investment residential property

(1) A person may make a claim against the fund for capital loss because of, or arising out of, a marketeering contravention in relation to the person's purchase of a non-investment residential property only if—

(a) the person has within 1 year after the contract date, given the chief executive notice in the approved form that the person intends to make the claim; and

(b) the person makes the claim within 6 years after the contract date.

(2) The approved form must include the matters mentioned in section 473(2)(a) to (d).

(3) In this section—

contract date means the day on which the contract for the purchase was entered into.

472B Time limit for a claim notified by receiver

Despite section 472 or 472A, a claim given under section 432(3)(b)[157] to the chief executive by a receiver is taken to have been made within the time allowed under section 472 or 472A.

157 Section 432 (Payment of claims)

473 Making claims other than particular claims relating to marketeering contraventions and non-investment residential property

(1) This section applies to a claim against the fund, other than a claim for loss because of, or arising out of, a marketeering contravention in relation to the purchase of a non-investment residential property.

(2) The claim must be made to the chief executive in the approved form and state—

(a) the event alleged to give rise to the claim; and

(b) when the event happened; and

(c) if the claimant was not immediately aware that the claimant suffered financial loss because of the happening of the event, when the claimant became aware of the financial loss; and

(d) all relevant particulars about the event and the financial loss; and

(e) the claimant's estimated financial loss.

(3) The claim is taken to have been made on the day the claim is given to the chief executive even though the claimant is unable to state all of the particulars mentioned in subsection (2).

(4) The chief executive may require the claimant to verify the claim, or part of the claim.

Example of verification—

Statutory declaration.

(5) If the claim is not made within the time allowed under section 472, the chief executive must give the person a notice in the approved form stating that—

(a) the claim is out of time; and

(b) the person may apply to the tribunal, within 14 days after being given the notice, for an extension of time within which to make the claim.

473A Making particular claims relating to marketeering contraventions and non-investment residential property

(1) This section applies to a claim against the fund for capital loss because of, or arising out of, a marketeering contravention in relation to the purchase of a non-investment residential property.

(2) The claim must—

(a) be made to the chief executive in the approved form; and

(b) state the realised capital loss claimed.[158]

(3) A purported claim that does not substantially comply with subsection (2) is of no effect.

(4) The chief executive may require the claimant to verify the claim or part of the claim.

Example of verification—

Statutory declaration.

(5) To remove any doubt, it is declared that if the purchase was by more than 1 person, only 1 claim may be made.

(6) A claim mentioned in subsection (5) may be made by 1 of the purchasers or by 2 or more of the purchasers jointly.

474 Chief executive to give respondent notice of claim

(1) The chief executive must give notice of the claim (***claim notice***) to the person or persons (***respondent***) whose actions are alleged to have given rise to the claim.

(2) The claim notice must be accompanied by a copy of the claim.

(3) The respondent may—

(a) give the chief executive any information relevant to the claim; or

(b) attempt to settle the claim with the claimant.

158 See also division 4A (Deciding financial loss for non-investment residential property).

(4) The respondent must give the chief executive any information relevant to the claim within 14 days after the claim notice is received by the respondent.

(5) If the respondent and claimant settle the claim, the respondent must immediately advise the chief executive in writing and provide evidence of the settlement.

(6) If the chief executive is satisfied that the claim has settled, the chief executive may treat the claim as having been withdrawn.

(7) In this section—

claim does not include a claim given to the chief executive by a receiver under section 432(3)(b).

475 Corporation to give notices in relation to claim

(1) This section applies if the respondent is a corporation.

(2) The respondent must give written notice of the claim, within 14 days after the claim notice is received by the respondent, to each person who was an executive officer of the corporation at the time the event alleged to give rise to the claim happened, unless the respondent has a reasonable excuse.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—100 penalty units; or

(b) for a corporation—500 penalty units.

(3) An executive officer mentioned in subsection (2) is taken to be a respondent to the claim.

(4) The respondent is taken to have given the notice to an executive officer if the notice is sent to the residential and business address of the officer last known to the respondent.

(5) The respondent must give the chief executive, within 21 days after the claim notice is given to the respondent—

(a) written notice of the name and last known residential and business address of each person who was an executive officer of the corporation at the time the event alleged to give rise to the claim happened; and

(b) a copy of the notice to the former executive officer given under subsection (2) and information about when the notice was given.

Maximum penalty for subsection (5)—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—100 penalty units; or

(b) for a corporation—500 penalty units.

476 Dealing with claims that have not settled

(1) If the claim has not settled within 28 days after the claim notice is given to the respondent, the claimant may give the chief executive written notice that the claimant wants to proceed with the claim.

(2) If a notice under subsection (1) relates to a minor claim, the chief executive is to decide the minor claim.

(3) If a notice under subsection (1) relates to a claim other than a minor claim, the tribunal is to decide the claim.

477 Inspector may investigate claims and prepare report

(1) The chief executive may direct an inspector to investigate a claim that has not settled.

(2) If an inspector investigates a claim, the inspector must prepare a report about the claim and give a copy of the report to the chief executive.

(3) The chief executive must give a copy of the report to the claimant and the respondent and, if the report is about a claim to be decided by the tribunal, to the chairperson of the tribunal.

Division 3 Minor claims

478 Procedure for deciding minor claims

(1) This division applies to a minor claim the chief executive must decide.

(2) The chief executive, by written notice, must invite the claimant and the respondent (the ***parties***) to give the chief executive written comments in relation to the inspector's report prepared under section 477 within 14 days after giving the notice.

(3) If the chief executive receives comments from 1 or both parties, the chief executive must provide the other party with a copy of the comments and invite that party to give the chief executive any further comments within 14 days after giving the notice.

(4) The chief executive, by written notice, may ask the claimant or respondent for the further information or documents the chief executive reasonably requires to decide the claim.

(5) The chief executive must have regard to any report prepared by an inspector under section 477 and the parties' comments when deciding the claim.

(6) The chief executive must decide the claim without a hearing.

479 Amendment of claim

(1) The chief executive may, at any time before deciding the claim, amend the particulars of the claim in the way the chief executive considers appropriate—

(a) on application, if the chief executive is satisfied the amendment is of a formal or minor nature and no party is unfairly prejudiced by the amendment; or

(b) on the chief executive's own initiative, if all the parties agree.

(2) The amended claim is taken to be the claim.

480 Respondent fails to respond to claim

(1) This section applies if the chief executive is satisfied that the respondent—

(a) has been given notice of the claim, but has not responded to the claim; or

(b) can not be located after the making of reasonable inquiries into the respondent's whereabouts.

(2) The chief executive may consider and decide the claim in the absence of any comments or submissions made by the respondent.

481 Deciding minor claims

(1) The chief executive may allow the claim, wholly or partly, or reject the claim.

(2) However, the chief executive may allow the claim only if satisfied, on the balance of probabilities, that—

(a) an event mentioned in section 470(1)[159] happened; and

(b) the claimant suffered financial loss because of the happening of the event.

(3) If the chief executive allows the claim, wholly or partly, the chief executive must—

(a) take into account any amount the claimant might reasonably have received or recovered if not for the claimant's neglect or default; and

(b) decide the amount of the claimant's financial loss; and

(c) name the person who is liable for the claimant's financial loss.

(4) The chief executive's decision must be signed and dated and must state clearly—

(a) the decision; and

(b) the chief executive's findings in relation to the facts of the case; and

159 Section 470 (Claims)

(c) the reasons for the decision; and

(d) if the decision is that an amount be paid to the claimant from the fund—

(i) that the respondent named in the decision is liable to reimburse the fund to the extent of the amount paid to the claimant from the fund; and

(ii) if more than 1 person is named as being liable to reimburse the fund, that the liability of the persons named is joint and several.

482 Notifying decision

(1) The chief executive must give the parties written notice of the chief executive's decision, a copy of the decision and a review notice within 14 days after making the decision.

(2) In this section—

review notice means a notice stating the following—

(a) that a party dissatisfied with the chief executive's decision may apply to the registrar to have the decision reviewed by the tribunal within 28 days after receiving the notice;

(b) how the application to have the decision reviewed is to be made;

(c) that if no application is made to have the decision reviewed within the time allowed—

(i) the decision is binding on the parties; and

(ii) if the decision is to allow the claim and authorise payment from the fund, the respondent named in the decision as liable to reimburse the fund is liable to reimburse the fund to the extent of the amount paid to the claimant from the fund.

483 Party may ask tribunal to review chief executive's decision

A party who is dissatisfied with the chief executive's decision under section 481 may apply to the registrar within 28 days

after receiving the review notice to have the decision reviewed by the tribunal.

484 Chief executive's decision binds the parties

If no application for review of the chief executive's decision is made within the time allowed under section 483—

(a) the chief executive's decision is binding on the claimant and the respondent; and

(b) the amount paid to the claimant from the fund in accordance with the decision may be recovered by the chief executive as a debt owing to the chief executive by the respondent named in the decision; and

(c) the respondent may not subsequently challenge the correctness of the decision or the amount payable.

Division 4 Claims other than minor claims

485 Registrar to fix hearing date and issue attendance notices

(1) On referral of a claim, other than a minor claim, to the tribunal, the registrar must fix a day for the hearing of the claim (***hearing date***) and issue a notice in the approved form (***attendance notice***) to the claimant requiring the claimant and the respondent to attend before the tribunal.

(2) The hearing date must be a day at least 14 days after the claim is referred to the tribunal, unless the parties agree on an earlier day.

(3) The claimant must give a copy of the attendance notice to the respondent at least 7 days before the day fixed for the hearing.

488 Deciding claims other than minor claims

(1) The tribunal may allow the claim, wholly or partly, or reject the claim.

(2) However, the tribunal may allow the claim only if satisfied, on the balance of probabilities, that—

(a) an event mentioned in section 470(1)[160] happened; and

(b) the claimant suffered financial loss because of the happening of the event.

(3) If the tribunal allows the claim, wholly or partly, the tribunal must—

(a) take into account—

(i) any amount the claimant might reasonably have received or recovered if not for the claimant's neglect or default; and

(ii) any amount ordered to be paid to the claimant as compensation under section 530A, 572D or 592A;[161] and

(b) decide the amount of the claimant's financial loss; and

(c) name the person who is liable for the claimant's financial loss.

Division 4A Deciding financial loss for non-investment residential property

488A Application of div 4A

This division applies if the chief executive or the tribunal is deciding a claimant's financial loss for realised capital loss because of, or arising out of, a marketeering contravention in relation to the purchase of a non-investment residential property.[162]

488B General test for working out loss

(1) Subject to section 488C, the financial loss is the amount of the difference between the contract price or value for the property

160 Section 470 (Claims)

161 Section 530A (Orders tribunal may make in a marketeer proceeding), 572D (Orders District Court may make) or 592A (Power of court for particular offences)

162 See also section 471A (Claims limited to realised loss).

paid by the claimant and the contract price or value for the sale of the property by the claimant (the ***on-sale***).

(2) The loss is only realised if the on-sale has been completed.[163]

488C Adjustment for on-sale not at market value

(1) The chief executive or the tribunal must decide whether the contract price or value for the on-sale reasonably reflected the property's market value when the contract was entered into.

(2) If the chief executive or the tribunal decides the contract price or value did not reasonably reflect the property's market value—

(a) the chief executive or the tribunal must fix what the reasonable market value of the property was when the contract was entered into; and

(b) for section 488B(1), the contract price or value is taken to be that fixed market value.

Division 5 Payment of claims and liability of persons for payments from the fund

489 Payment of claims

(1) If a claim is allowed under section 481 or 488[164] or on a review of the chief executive's decision, the chief executive must authorise payment from the fund in the amount decided by the chief executive or the tribunal.

(2) A payment under subsection (1)—

(a) must not be made—

(i) for a minor claim—until the end of the period allowed for review of the chief executive's decision and, if a review is applied for, until the review and any appeal is finally decided; or

163 See also section 634 (Application of amendments to claims).

164 Section 481 (Deciding minor claims) or 488 (Deciding claims other than minor claims)

(ii) otherwise—until the end of the period allowed for appeal and, if an appeal is made, until the appeal is finally decided; and

(b) is taken to be in full settlement of the claim against the fund.

(3) This section is subject to section 492.

490 Liability for payment from the fund

(1) This section applies if—

(a) a person (the ***responsible person***) is named in the chief executive's decision or the tribunal's order as being liable for a claimant's financial loss;[165] and

(b) an amount has, under section 489, been paid from the fund to the claimant in settlement of the claimant's claim.

(2) Each person as follows is jointly and severally liable to reimburse the fund to the extent of the amount paid to the claimant—

(a) the responsible person;

(b) if the responsible person is a corporation—each person who was an executive officer of the corporation when the relevant event mentioned in section 470(1)[166] happened.

(3) The chief executive may recover from each person mentioned in subsection (2) as a debt an amount for which the person is, under the subsection, liable to reimburse the fund.[167]

(4) Before taking action to recover the amount of the debt, the chief executive must give a letter of demand to the debtor requiring the debtor to pay the amount to the chief executive within 28 days after receiving the letter.

165 See sections 481 (Deciding minor claims), 488 (Deciding claims other than minor claims) and 530 (Orders tribunal may make on claim hearing).

166 Section 470 (Claims)

167 See also section 635 (Application of liability for payment from the fund).

492 Limits on recovery from fund

(1) A claimant can not recover from the fund an amount more than the balance of the claimant's financial loss after deducting from the claimant's loss—

(a) the amount, including the value of all benefits, received or recovered by the claimant from a source other than the fund in reduction of the loss; and

(b) the amount, including the value of all benefits, the chief executive or the tribunal considers the claimant might reasonably have received or recovered if not for the claimant's neglect or default.

Examples of paragraph (a)—

1 Compensation received from the licensee for the loss.

2 A payment from a receiver for the loss.

(2) A claimant may not recover from the fund for a single claim an amount more than the amount prescribed under a regulation.

(3) Also, the claimant may not recover more than $35000 from the fund for a single claim for financial loss if the claim relates to a non-investment residential property purchased by the claimant because of, or arising out of, a marketeering contravention.[168]

(4) A regulation may prescribe the total amount that may be paid from the fund because of, or arising out of, a contravention, failure to ensure clear title to a vehicle, stealing, misappropriation or misapplication by a single person.

(5) Interest is not payable from the fund in relation to a claim allowed against the fund.

493 Notice of other recovery

A claimant must give the chief executive written notice of an amount or benefit, other than an amount from the fund, received by the claimant in relation to the claimant's financial loss, whether before or after the claim is paid.

168 See also section 634 (Application of amendments to claims).

Maximum penalty—200 penalty units or 3 years imprisonment.

Division 6 Reimbursements to fund

494 Recovery of payments—general

The chief executive must pay to the fund any amount recovered by the chief executive in satisfaction of an amount paid from the fund.

495 Recovery of overpayments

(1) This section applies if a claimant who has received a payment from the fund recovers—

(a) an amount more than the claimant is entitled to recover under section 492[169] (***overpayment***); or

(b) a thing capable of physical delivery in relation to which the claimant received a payment from the fund.

(2) The claimant must—

(a) reimburse the overpayment to the fund; or

(b) for a thing capable of physical delivery—

(i) deliver the thing to the chief executive in accordance with the chief executive's direction; or

(ii) reimburse to the fund the amount of the payment from the fund the person received in relation to the thing.

Maximum penalty—200 penalty units.

(3) The chief executive may recover the overpayment or the amount of the payment from the fund the person received in relation to the thing as a debt owing to the chief executive by the person.

(4) If the chief executive receives a thing, the chief executive may sell the thing in the way the chief executive decides.

169 Section 492 (Limits on recovery from fund)

Part 3 Disciplinary proceedings

496 Grounds for starting disciplinary proceedings

(1) The following are grounds for starting a disciplinary proceeding against a licensee or registered employee—

(a) the licensee or employee has been convicted of an indictable offence or an offence against this Act;

(b) the licensee or employee has contravened or breached—

(i) this Act, including a code of conduct; or

(ii) an undertaking given under chapter 16, part 2;[170] or

(iii) a corresponding law;

(c) the licensee or employee has been disqualified from holding a licence under a corresponding law;

(d) an amount has been paid from the fund because the licensee or employee did, or omitted to do, something that gave rise to a claim against the fund;

(e) the licensee or employee fraudulently or improperly obtained, or helped someone else to fraudulently or improperly obtain, a licence;

(f) the licensee or employee has failed to comply with an order made by the small claims tribunal, a court or the tribunal;

(g) for a licensee—

(i) the licensee is not a suitable person to hold a licence; or

(ii) the licensee has carried on, or is carrying on, business under a licence with someone who is not a suitable person to hold a licence; or

(iii) the licensee has, in carrying on a business or performing an activity, been incompetent or acted in an unprofessional way; or

170 Chapter 16 (Injunctions, undertakings, preservation of assets and civil penalties), part 2 (Undertakings)

(iv) the licensee has failed to ensure that the licensee's employed licensees or registered employees, or employees under the licensee's supervision—

(A) are properly supervised in the performance of their duties; or

(B) comply with this Act; or

(v) the licensee has failed to comply with a condition of the licensee's licence; or

(vi) the licensee is an executive officer of a corporation that the tribunal finds guilty of a disciplinary charge under section 529;[171] or

(vii) if the licensee is a corporation—

(A) an executive officer of the corporation is not a suitable person to be an executive officer of a corporation; or

(B) an executive officer of the corporation is disqualified under this Act from being an executive officer of a corporation;

(h) for a registered employee—

(i) the employee is not eligible to be employed as a registered employee; or

(ii) the employee has—

(A) in performing an activity of a licensee, been incompetent or acted in an unprofessional way; or

(B) performed an activity not authorised under the employee's employment authority.

(2) The chief executive must not start a disciplinary proceeding against an executive officer under subsection (1)(g)(vi) if the chief executive is satisfied—

(a) the act or omission relevant to the proceeding against the corporation was done or made without the officer's knowledge; and

171 Section 529 (Orders tribunal may make on disciplinary charge hearing)

(b) the officer could not, with reasonable diligence, have prevented the doing of the act or the making of the omission.

497 Starting disciplinary proceedings

The chief executive may apply to the tribunal to conduct a proceeding to decide whether grounds exist under section 496 for taking disciplinary action against a licensee or registered employee.

Part 3A Marketeer proceedings

500A Grounds for starting marketeer proceeding

The following are grounds for starting a proceeding against a marketeer for orders under section 530A (***marketeer proceeding***)—

(a) the marketeer has contravened or is contravening section 573A, 573B or 573C;[172]

(b) the marketeer is likely or proposing to engage in conduct that would contravene section 573A, 573B or 573C;

(c) the marketeer is reasonably suspected of anything mentioned in paragraph (a) or (b).

500B How to start a proceeding

(1) The chief executive may apply to the tribunal to conduct a marketeer proceeding by filing with the registrar a statement in the approved form (***complaint***) stating—

(a) the grounds for starting the proceeding; and

172 Section 573A (Misleading conduct), 573B (Unconscionable conduct) or 573C (False representations and other misleading conduct in relation to residential property)

(b) the conduct constituting the grounds; and

(c) that an application will be made for orders under section 530A.

(2) The registrar must fix a day for the hearing of the complaint (***hearing date***) and issue a notice in the approved form (***attendance notice***) requiring the marketeer to attend before the tribunal.

(3) The chief executive must give a copy of the complaint and attendance notice to the marketeer at least 14 days before the day fixed for the hearing.

(4) The complaint and attendance notice may be combined in 1 notice.

(5) The chief executive must notify the registrar of service of the complaint and attendance notice within 7 days after the complaint and attendance notice have been given to the marketeer.

500C When proceeding is taken to start

A marketeer proceeding is taken to start on the day the marketeer is given the complaint and attendance notice.

Part 4 Review proceedings

501 Person dissatisfied with chief executive's decision may seek review

A person who is dissatisfied with a decision of the chief executive made under a provision specified in schedule 1 may apply to the tribunal to have the decision reviewed (***application for review***).

505 Stay of operation of decisions

(1) A decision of the chief executive, other than a decision made under section 74, 104 or 412,[173] being reviewed is stayed for the purpose of securing the effectiveness of the review.

(2) However, the period of a stay does not extend past the time when the tribunal decides the application.

Part 5 Proceedings generally

Division 1 Extending time

511 Tribunal may extend time

(1) The tribunal may extend the time within which to file the claim or seek review of a decision of the chief executive if the tribunal is satisfied—

(a) the application is made—

(i) for a claim—within the time mentioned in the notice given under section 473(5)(b);[174] or

(ii) for a review of a decision of the chief executive—within 42 days after the person receives notice of the decision to be reviewed; and

(b) it is appropriate to extend time having regard to—

(i) the reasons for not making the claim or seeking the review within the time allowed; and

(ii) the application generally; and

173 Section 74 (Immediate suspension), 104 (Immediate suspension) or 412 (Chief executive may freeze licensee's accounts in particular cases)

174 Section 473 (Making claims other than particular claims relating to marketeering contraventions and non-investment residential property)

(iii) for a claim, the relative hardship that an extension of time or a refusal to extend time would place on the claimant or respondent; and

(iv) the justice of the matter generally.

(2) No appeal lies against the tribunal's decision under this section.

Division 6 Applications for summary orders

527 Application for summary order

(1) The chief executive may apply to the tribunal in the approved form for a summary order under this section.

(2) The application must be filed with the registrar and accompanied by the following documents—

(a) a copy of the claim against the fund in relation to which the application is made;

(b) copies of the written notice of the chief executive's decision, the decision and the review notice given under section 482;

(c) a copy of the letter of demand given under section 490(4);

(d) a statutory declaration by the chief executive stating—

(i) the amount paid from the fund in settlement of the claim; and

(ii) the amount of any payment received from the respondent in satisfaction of the claim.

528 Respondent to be advised of application for summary order

(1) On receiving the application, the registrar must—

(a) fix a date for consideration of the application by the tribunal; and

(b) give a copy of the application and the accompanying documents to the respondent; and

(c) advise the respondent that the tribunal will make a summary order if satisfied that—

(i) the chief executive has made a decision in relation to the claim against the fund; and

(ii) under the chief executive's decision the respondent is liable to reimburse the fund in a stated amount; and

(iii) written notice of the chief executive's decision, a copy of the decision and a review notice under section 482 were sent to the respondent; and

(iv) the respondent did not apply for review of the chief executive's decision under section 483; and

(v) a letter of demand was sent to the respondent under section 490(4); and

(vi) the respondent has not paid the stated amount within the time allowed under the letter of demand.

(2) The registrar must invite the respondent to make written submissions for the tribunal's consideration about when and in what way the respondent intends to satisfy the amount paid from the fund in settlement of the claim.

(3) Submissions made under subsection (2) must be given to the registrar by a date notified to the respondent being a day at least 7 days before the day fixed for consideration of the application.

Division 7 Reference committee

528AA Reference committee

(1) A reference committee is established.

(2) The reference committee consists of—

(a) the commissioner for fair trading; and

(b) 2 community representatives who are not public service employees.

(3) One of the community representatives must have a demonstrated interest in civil liberties and the other must be a person the Minister considers has appropriate and relevant experience in fair trading issues.

(4) Community representatives are to be appointed by the Governor in Council.

(5) The community representatives' appointment term and conditions are as decided by the Governor in Council.

528AB Reference committee functions

The reference committee's function is to decide whether conduct of a marketeer that is being investigated under this Act should be the subject of an application to the tribunal for a public examination.

528AC Reference committee may authorise application for public examination

(1) If the chief executive considers that a public examination may help the chief executive decide whether or not to start a marketeer proceeding against a marketeer, the chief executive may refer the conduct to the reference committee.

(2) After considering all relevant issues, the reference committee may authorise the chief executive to make an application to the tribunal for a public examination under division 8.

(3) The reference committee must not authorise the chief executive to make the application unless satisfied—

(a) it is unlikely further investigation of the conduct by an inspector will be effective for deciding whether to start a marketeer proceeding; and

(b) a public examination may help find out whether a marketeer has contravened section 573A, 573B or 573C; and

(c) it is in the public interest to make the application.

Division 8 Public examinations

528A Tribunal may conduct public examination

(1) The tribunal may, on the chief executive's application, conduct a public examination that investigates the conduct of a marketeer to find out whether the marketeer has contravened section 573A, 573B or 573C.[175]

(2) The application may be made whether or not a marketeer proceeding has been started.

(3) This part applies to a public examination as if it were a hearing before the tribunal.

Division 9 Stopping particular conduct

528C Stopping particular conduct

(1) This section applies if a marketeer proceeding has been started against a marketeer and, on the chief executive's application, the tribunal is satisfied, or is satisfied there is a reasonable suspicion, that the marketeer—

(a) has contravened or is contravening section 573A, 573B or 573C; or

(b) is likely or proposing to engage in conduct that would contravene section 573A, 573B or 573C.

(2) The tribunal may, by order, prohibit the marketeer from engaging in conduct that, alone or together with other conduct, is a contravention of section 573A, 573B or 573C, until the end of the marketeer proceeding.

(3) The tribunal may make an order under this section on the chief executive's application made without notice to the marketeer but, in that case, the tribunal must allow the

175 Section 573A (Misleading conduct), 573B (Unconscionable conduct) or 573C (False representations and other misleading conduct in relation to residential property)

marketeer a reasonable opportunity to show cause why the order should not be confirmed.

(4) If the tribunal, after considering the marketeer's evidence and representations, if any, and any further evidence or representations of the chief executive, is not satisfied the order should continue in force, the tribunal must cancel the order.

(5) A person must not contravene an order under this section.

Maximum penalty—540 penalty units.

(6) In a proceeding against a person under this Act, the making of an order under this section is evidence of the facts or circumstances giving rise to the making of the order.

(7) An order under this section has effect on the giving of a copy of the order to the marketeer.

Division 10 Tribunal's orders

529 Orders tribunal may make on disciplinary charge hearing

(1) The tribunal may make 1 or more of the following orders against a person the tribunal finds guilty of a disciplinary charge brought under this Act—

(a) an order reprimanding the person;

(b) an order that the person pay to the chief executive, within the time stated in the order, a fine of not more than 200 penalty units;

(c) an order that the person's licence or registration certificate be suspended for the period stated in the order;

(d) an order—

(i) if the person is the holder of a licence or registration certificate at the time the order is made—that the licence or registration certificate be cancelled; or

(ii) whether or not the person is the holder of a licence or registration certificate at the time the order is made—that the person be disqualified

permanently, or for the period stated in the order, from holding a licence or registration certificate;

(e) an order, for a licensed individual who is an executive officer of a corporation, that the individual be disqualified permanently, or for the period stated in the order, from being an executive officer of a corporation that holds a licence;

(f) an order imposing conditions on, or amending or revoking the conditions of, the person's licence or registration certificate;

(g) another order the tribunal considers appropriate to ensure the person complies with this Act.

(2) The tribunal may not make an order under subsection (1)(d)(ii) disqualifying the person from holding a licence or registration certificate if the tribunal is satisfied that a court has, in relation to the matter giving rise to the disciplinary charge—

(a) been asked to make an order under section 592(2)[176] disqualifying the person from holding a licence or registration certificate; and

(b) declined to do so.

530 Orders tribunal may make on claim hearing

The tribunal may make the following orders in relation to a claim against the fund—

(a) an order allowing the claim, wholly or partly, or rejecting the claim;

(b) an order stating that a named person is liable for a claimant's financial loss and the amount of the loss;

(c) an order about recovery of an amount payable in relation to a claim;

(d) an order that no amount is recoverable in relation to a claim.

176 Section 592 (Power of court)

530A Orders tribunal may make in a marketeer proceeding

(1) This section applies if, in a marketeer proceeding, the tribunal is satisfied a marketeer has contravened section 573A, 573B or 573C.

(2) The tribunal may make 1 or more of the following orders against the marketeer—

(a) an order that the person pay to the chief executive, within the time stated in the order, an amount of not more than the money value of—

(i) for an individual—200 penalty units; or

(ii) for a corporation—1000 penalty units;

(b) an order that the person's licence or registration certificate, if any, be suspended for the period stated in the order;

(c) an order—

(i) if the person is the holder of a licence or registration certificate when the order is made—that the licence or registration certificate be cancelled; or

(ii) whether or not the person is the holder of a licence or registration certificate when the order is made—that the person be disqualified, for the period stated in the order, of not more than 5 years, from holding a licence or registration certificate;

(d) an order that an individual be disqualified, for the period stated in the order, of not more than 5 years, from being an executive officer of any corporation that holds a licence;

(e) an order imposing conditions on, or amending or revoking the conditions of, the person's licence or registration certificate, if any;

(f) an order prohibiting a person from being involved in any way in the business of the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property in Queensland for the period stated in the order, of not more than 5 years;

(g) an order restricting the way the person conducts the business of the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property in Queensland for the period stated in the order, of not more than 5 years;

(h) an order to pay to a person who has suffered financial loss, as compensation, an amount, decided by the tribunal, up to the limit of a Magistrates Court's civil jurisdiction;

(i) another order the tribunal considers appropriate to ensure the person complies with this Act.

(3) However, the tribunal may make an order under subsection (2)(a) or (h) against a person who is not licensed or a registered employee only on the basis of evidence, submissions and other information received in accordance with the evidentiary law and practice applicable to a civil proceeding in a Magistrates Court.

(4) If—

(a) the tribunal proposes to order a marketeer to pay an amount to the chief executive under subsection (2)(a)(i) and compensation under subsection (2)(h); and

(b) the marketeer does not have enough financial resources to pay both;

the tribunal must prefer to make an order for compensation.

(5) If—

(a) the tribunal orders a corporation to pay an amount to the chief executive under subsection (2)(a)(ii) or compensation under subsection (2)(h); and

(b) the corporation does not have enough financial resources to pay either or both;

the executive officers of the corporation are jointly and severally liable to pay any amount not paid by the corporation.

(6) It is a defence to a liability under subsection (5) for an executive officer to prove that—

(a) if the officer was in a position to influence the conduct of the corporation in relation to the conduct in

question—the officer took all reasonable steps to ensure the corporation did not contravene section 573A, 573B or 573C; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the conduct in question.

(7) For subsection (6)(a), it is sufficient for the executive officer to prove that the act or omission that was the conduct in question was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the corporation did not contravene section 573A, 573B or 573C.

530B Criteria for deciding amount to be ordered

To decide the amount a person may be ordered to pay under section 530A, the tribunal must consider—

(a) the person's conduct before and after the contravention; and

(b) whether the conduct was deliberate; and

(c) the period over which the conduct happened; and

(d) the amount of financial loss caused by the contravention; and

(e) any similar past conduct of the person, including conduct happening before the commencement of this section; and

(f) the person's financial position; and

(g) whether the conduct could have been prevented; and

(h) if the person is a corporation—the extent to which the executive officers of the corporation knew or should have known of the contravention; and

(i) any action the person took to remedy the contravention including, for example, compensating persons who suffered financial loss because of it; and

(j) the extent to which the person cooperated with the chief executive to remedy the contravention and prevent

future contraventions; and

(k) any other relevant factor.

532 Summary orders

(1) The tribunal must consider an application for a summary order and any written submissions made by the respondent for the application.

(2) The tribunal must make a summary order if satisfied that—

(a) the chief executive has made a decision in relation to a claim against the fund; and

(b) under the chief executive's decision the respondent is liable to reimburse the fund in a stated amount; and

(c) written notice of the chief executive's decision, a copy of the decision and a review notice under section 482 were sent to the respondent; and

(d) the respondent did not apply for review of the chief executive's decision under section 483; and

(e) the respondent has not paid the stated amount within the time allowed under the letter of demand.

(3) If the tribunal makes a summary order, the order must state that the respondent is liable to pay to the chief executive a stated amount within a stated period.

Chapter 15 Enforcement

Part 1 Inspectors

541 Appointment

(1) The chief executive is an inspector.

(2) The chief executive may appoint a person as an inspector.

(3) The chief executive may appoint a person as an inspector only if the chief executive is satisfied the person has the necessary expertise or experience to be an inspector.

542 Limitation of inspector's powers

The powers of an inspector may be limited—

(a) under a regulation; or

(b) under a condition of appointment; or

(c) by written notice of the chief executive given to the inspector.

543 Appointment conditions

(1) An inspector holds office on the conditions stated in the instrument of appointment.

(2) An inspector ceases holding office—

(a) if the appointment provides for a term of appointment—at the end of the term; or

(b) if the conditions of appointment provide—on ceasing to hold another office (the ***main office***) stated in the appointment conditions.

(3) An inspector may resign by signed notice of resignation given to the chief executive.

(4) However, an inspector may not resign from the office of inspector (the ***secondary office***) if a condition of the inspector's employment to the main office requires the inspector to hold the secondary office.

544 Identity cards

(1) The chief executive must give each inspector an identity card.

(2) The identity card must—

(a) contain a recent photo of the inspector; and

(b) be signed by the inspector; and

(c) identify the person as an inspector; and

(d) include an expiry date on the card.

(3) This section does not prevent the issue of a single identity card to a person for this and other Acts.

545 Failure to return identity card

A person who stops being an inspector must return the person's identity card to the chief executive as soon as practicable, but within 21 days, after the person stops being an inspector, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

546 Production or display of identity cards

(1) An inspector may exercise a power under this Act in relation to a person only if the inspector—

(a) first produces the inspector's identity card for the other person's inspection; or

(b) has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for the other person's inspection at the first reasonable opportunity.

Part 2 Inspectors' powers

Division 1 Entry to places

547 Entry to places

(1) An inspector may enter a place if—

(a) its occupier consents to the entry; or

(b) it is a public place and the entry is made when it is open to the public; or

(c) the entry is authorised by a warrant; or

(d) it is a licensee's place of business and is—

(i) open for carrying on business; or

(ii) otherwise open for entry; or

(iii) required to be open for inspection under, or as a condition of, the licensee's licence; or

(e) it is a marketeer's place of business and is—

(i) open for carrying on business; or

(ii) otherwise open for entry.

(2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent or a warrant—

(a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or

(b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) For subsection (1)(d) and (e), a place of business does not include a part of the place where a person resides.

Division 2 Procedure for entry

548 Entry with consent

(1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 547(1)(a).

(2) Before asking for the consent, the inspector must tell the occupier—

(a) the purpose of the entry; and

(b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

(a) the occupier has been told—

(i) the purpose of the entry; and

(ii) that the occupier is not required to consent; and

(b) the purpose of the entry; and

(c) the occupier gives the inspector consent to enter the place and exercise powers under this part; and

(d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the inspector must immediately give a copy to the occupier.

(6) A court must find the occupier of a place did not consent to an inspector entering the place under this part if—

(a) an issue arises in a proceeding in the court whether the occupier of the place consented to the entry under section 547(1)(a); and

(b) an acknowledgment mentioned in subsection (4) is not produced in evidence for the entry; and

(c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

549 Application for warrant

(1) An inspector may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require that additional information supporting the application be given by a statutory declaration.

550 Issue of warrant

(1) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity (the ***evidence***) that may provide evidence of an offence against this Act; and

(b) the evidence is at the place, or, within the next 72 hours, may be at the place.

(2) The warrant must state—

(a) that an inspector may, with necessary and reasonable help and force—

(i) enter the place and any other place necessary for entry; and

(ii) exercise the inspector's powers under this Act; and

(b) the offence for which the warrant is sought; and

(c) the evidence that may be seized under the warrant; and

(d) the hours of the day or night when the place may be entered; and

(e) the date, within 7 days after the warrant's issue, the warrant ends.

551 Special warrants

(1) An inspector may apply for a warrant (***special warrant***) by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including for example, the inspector's remote location.

(2) Before applying for the special warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the special warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must immediately fax a copy (***facsimile warrant***) to the inspector if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the inspector—

(a) the magistrate must tell the inspector—

(i) what the terms of the special warrant are; and

(ii) the date and time the special warrant is signed; and

(b) the inspector must complete a form of warrant (***warrant form***) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the special warrant; and

(iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The inspector must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if the inspector completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) A court must find the exercise of the power by an inspector was not authorised by a special warrant if—

(a) an issue arises in a proceeding in the court whether the exercise of the power was authorised by a special warrant mentioned in subsection (1); and

(b) the special warrant is not produced in evidence; and

(c) it is not proved by the person relying on the lawfulness of the entry that the inspector obtained the special warrant.

552 Warrants—procedure before entry

(1) This section applies if an inspector named in a warrant issued under this part for a place is intending to enter the place under the warrant.

(2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector's identity card or other document evidencing the inspector's appointment;

(b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 551(6), a copy of the facsimile warrant or warrant form;

(c) tell the person the inspector is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

(3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

Division 3 Powers after entry

553 Inspector's powers in a place under a warrant

(1) This section applies to an inspector who enters a place under a warrant.

(2) The inspector may—

(a) search any part of the place; or

(b) seize the evidence for which the warrant was issued; or

(c) seize a thing if the inspector believes, on reasonable grounds—

(i) the thing is evidence of an offence against this Act; and

(ii) the seizure is necessary to prevent—

(A) the thing being hidden, lost or destroyed; or

(B) the thing being used to commit, continue or repeat an offence against this Act; or

(d) inspect, photograph or film the place or anything in the place; or

(e) copy a document in the place; or

(f) take into the place the persons, equipment and materials the inspector reasonably requires for exercising a power under this Act; or

(g) require a person in the place to give the inspector reasonable help to exercise the powers mentioned in paragraphs (a) to (f).

(3) A person must comply with a requirement under subsection (2)(g), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—200 penalty units or 1 year's imprisonment.

554 Procedure after thing seized

(1) As soon as practicable after a thing is seized by an inspector under section 553, the inspector must give a receipt for it to the person from whom it was seized.

(2) The inspector must allow a person who would be entitled to the seized thing if it were not in the inspector's possession—

(a) to inspect it; or

(b) if it is a document—to copy it.

(3) The inspector must return the seized thing to the person at the end of—

(a) 1 year; or

(b) if a proceeding for an offence involving it is started within 1 year—the proceeding and any appeal from the proceeding.

(4) Despite subsection (3), the inspector must return the seized thing to the person if the inspector is satisfied that—

(a) its retention as evidence is no longer necessary; and

(b) its return is not likely to result in its use in repeating the offence.

(5) Copying under subsection (2)(b) must be allowed within 7 days after it is requested.

Division 4 Other powers

555 Power to require name and address

(1) An inspector may require a person to state the person's name and address if the inspector—

(a) finds the person committing an offence against this Act; or

(b) finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect that the person has committed, or assisted in the commission of, an offence against this Act.

(2) When making the requirement, the inspector must warn the person that it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.

(3) The inspector may require the person to give evidence of the correctness of the person's name or address if the inspector reasonably suspects the name or address given is false.

(4) A person must comply with an inspector's requirement under subsection (1) or (3), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(5) A person does not commit an offence against subsection (4) if—

(a) the inspector required the person to state the person's name and address on suspicion of the person having

committed an offence against this Act; and

(b) the person is not proved to have committed the offence.

556 Power to require documents to be produced—licensees

(1) An inspector may require—

(a) a licensee to produce—

(i) the licensee's licence; or

(ii) documents relating to the licensee's trust account; or

(b) a licensee or other person who has possession, custody, or control of documents or things relating to the licensee's business to produce the documents or things; or

(c) a licensee or other person to give the inspector information about a produced document.

Examples of paragraph (b)—

1 Contracts relating to a transaction by or with the licensee in connection with the licensee's business as licensee.

2 Motor vehicle compliance plates.

(2) The inspector may require the licensee or other person to give the inspector the document, thing or information immediately or at a stated reasonable place at a stated reasonable time.

(3) The licensee or other person must comply with a requirement under subsection (1) or (2), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(4) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

(5) The inspector may—

(a) inspect a produced document or thing; or

(b) audit or copy a produced document; or

(c) seize a produced document or thing if the inspector believes, on reasonable grounds—

(i) the document or thing is evidence of an offence against this Act; and

(ii) the seizure is necessary to prevent—

(A) the document or thing being hidden, lost or destroyed; or

(B) the document or thing being used to commit, continue or repeat an offence against this Act.

(6) In this section—

licensee includes the following—

(a) a person who was a licensee but whose licence is no longer current;

(b) a person who is not licensed, but who acts as a licensee;

(c) a partner of a licensee;

(d) a person employed, or apparently employed, by a licensee.

trust account includes any account relating to money received in trust by a licensee as a licensee.

556A Power to require documents to be produced—marketeers

(1) An inspector may require a marketeer, or another person having possession, custody, or control of relevant documents on behalf of the marketeer, to produce any document relating to—

(a) the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property in which the marketeer has or had an interest; or

(b) the employment of a person by the marketeer in the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property in which the marketeer has or had an interest.

(2) The inspector may require the marketeer or other person to produce a document immediately or at a stated reasonable place at a stated reasonable time.

(3) The marketeer or other person must comply with a requirement under subsection (1) or (2), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(4) It is a reasonable excuse for an individual to fail to produce a document if producing the document might tend to incriminate the individual.

(5) The inspector may—

(a) inspect a produced document; or

(b) audit or copy a produced document; or

(c) seize a produced document if the inspector believes, on reasonable grounds—

(i) the document is evidence of an offence against this Act; and

(ii) the seizure is necessary to prevent—

(A) the document being hidden, lost or destroyed; or

(B) the document being used to commit, continue or repeat an offence against this Act.

557 Power to require information

(1) This section applies if an inspector believes, on reasonable grounds—

(a) an offence against this Act has been committed; and

(b) a person may be able to give information about the offence.

(2) The inspector may require the person to give information about the offence.

(3) The inspector may require the person to give the inspector the information at a stated reasonable place at a stated reasonable time.

(4) The person must comply with a requirement under subsection (2) or (3), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(5) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

Part 3 Other provisions about enforcement

558 Duties of financial institution managers

(1) The manager or principal officer of an office or branch of a financial institution where trust money has been deposited, whether to a trust account or another account, must—

(a) allow an inspector, on written demand signed by the inspector, to inspect and copy any documents relating to the account; and

(b) immediately a licensee's trust account is overdrawn, inform the chief executive of that fact; and

(c) immediately there is insufficient money in a licensee's trust account to meet a cheque drawn on the account, inform the chief executive of—

(i) the amount for which the cheque is drawn; and

(ii) the amount in the account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) In this section—

licensee includes—

(a) a former licensee; and

(b) a person who is not licensed, but who acts as a licensee.

trust money includes—

(a) an amount that, under section 379,[177] is required to be deposited to a licensee's trust account; and

(b) an instrument for the payment of an amount mentioned in paragraph (a) if the instrument may be paid into a financial institution; and

(c) a security for an amount mentioned in paragraph (a) if title to the security is transferable by delivery.

559 Notice of damage

(1) This section applies if—

(a) an inspector damages property when exercising or purporting to exercise a power; or

(b) a person (the ***other person***) acting under the direction or authority of an inspector damages property.

(2) The inspector must immediately give written notice of particulars of the damage to the person who appears to the inspector to be the owner of the property.

(3) If the inspector believes the damage was caused by a latent defect in the property or circumstances beyond the inspector's or other person's control, the inspector may state the belief in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the inspector reasonably believes is trivial.

(6) In this section—

owner, of property, includes the person in possession or control of it.

177 Section 379 (Dealing with amount on receipt)

560 Compensation

(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this chapter.

(2) Payment of compensation may be claimed and ordered in a proceeding for—

(a) compensation brought in a court of competent jurisdiction; or

(b) an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of compensation for the loss or expense only if it is satisfied that it is just to make the order in the circumstances of the particular case.

561 Threatening or obstructing inspectors

A person must not threaten or obstruct an inspector who is exercising a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 1 year's imprisonment.

562 Impersonation of inspectors

A person must not pretend to be an inspector.

Maximum penalty—50 penalty units.

Chapter 16 Injunctions, undertakings, preservation of assets and civil penalties

Part 1 Injunctions

563 Injunctions

An injunction under this part may be granted by the District Court against a person (***respondent***) at any time.

564 Who may apply for injunction

The following persons may apply to the District Court for an injunction—

(a) the chief executive;

(b) a person aggrieved by the respondent's conduct.

565 Grounds for injunction

The District Court may grant an injunction if the court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

(a) a contravention of this Act or a code of conduct; or

(b) attempting to contravene this Act or a code of conduct; or

(c) aiding, abetting, counselling or procuring a person to contravene this Act or a code of conduct; or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act or a code of conduct; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act or a code of conduct; or

(f) conspiring with others to contravene this Act or a code of conduct.

566 Court's powers for injunctions

(1) The power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised—

(a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind.

(2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—

(a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and

(b) whether or not the person has previously failed to do the act or thing.

(3) An interim injunction may be granted under this part until the application is finally decided.

(4) The District Court may rescind or vary an injunction at any time.

567 Terms of injunction

(1) The District Court may grant an injunction in the terms the court considers appropriate.

(2) Without limiting the court's power under subsection (1), an injunction may be granted restraining a person from carrying on a business as a licensee (whether or not the person is licensed or the business is carried on as part of, or incidental to, the carrying on of another business)—

(a) for a stated period; or

(b) except on stated terms and conditions.

(3) Also, the court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person's contravention of this Act or a code of conduct.

568 Undertakings as to costs

If the chief executive applies for an injunction under this part, no undertaking as to damages or costs may be required or made.

Part 2 Undertakings

569 Chief executive may seek undertaking after contravention

(1) If the chief executive believes, on reasonable grounds, a person has contravened or been involved in a contravention of this Act or a code of conduct, the chief executive may, by written notice given to the person—

(a) state the act or omission the chief executive believes is the contravention; and

(b) ask the person to give the chief executive a written undertaking that the person will not continue or repeat the act or omission.

(2) If—

(a) the person gives the undertaking and, if the contravention is conduct consisting of a series of acts or omissions, the person stops the conduct; and

(b) the chief executive accepts the undertaking;

the chief executive can not start an offence proceeding against the person for the contravention, unless the chief executive withdraws the undertaking under section 570.

569A Undertaking about other matter

Without limiting section 569, the chief executive may accept an undertaking given by a person for this section about anything for which the chief executive or an inspector has a function or power.

Example of type of undertaking for this section—

An undertaking to publish corrective advertising.

570 Variation and withdrawal of undertakings

(1) If the chief executive accepts the undertaking, it may be varied or withdrawn at any time by—

(a) the person who gave it, but only if the chief executive agrees to the variation or withdrawal; or

(b) the chief executive, if the chief executive believes, on reasonable grounds—

(i) that, before it was accepted, the person who gave it contravened this Act in a way unknown to the chief executive; and

(ii) had the chief executive known about the contravention, the chief executive would not have accepted the undertaking or would not have accepted it unless its terms were changed.

(2) The chief executive may also withdraw the undertaking if the chief executive believes, on reasonable grounds, it is no longer necessary.

(3) If the chief executive varies or withdraws, or agrees to the variation or withdrawal of, the undertaking, the chief executive must give the person who gave it written notice of its variation or withdrawal.

(4) The variation or withdrawal takes effect when written notice of the variation or withdrawal is received by the person.

571 Enforcement of undertakings

(1) If the chief executive believes, on reasonable grounds, a person has contravened a term of an undertaking, the chief

executive may apply to the District Court for an order under this section.

(2) If the court is satisfied that the person has contravened the term, the court may make 1 or more of the following orders—

(a) an order directing the person to comply with the term;

(b) an order directing the person to pay to the State an amount that is not more than the direct or indirect financial benefit obtained by the person from, and reasonably attributable to, the contravention;

(c) an order directing the person to pay compensation to someone else who has suffered loss or damage because of the contravention;

(d) an order directing the person to give a security bond to the State for a stated period;

(e) another order the court considers appropriate.

(3) The District Court may order the forfeiture to the State of all or part of a security bond given by a person under subsection (2)(d) if—

(a) the chief executive applies to the court for the order; and

(b) the court is satisfied that the person contravened the undertaking during the period for which the bond was given.

572 Register of undertakings

(1) The chief executive must keep a register of each undertaking given to the chief executive by a person under this part.

(2) The register must contain a copy of the undertaking.

(3) A person may, on payment of any fee that may be prescribed under a regulation, inspect, or get a copy of details in, the register—

(a) at a place or places decided by the chief executive; or

(b) by using a computer.

(4) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.

(5) The register may be kept in any way the chief executive considers appropriate.

Part 3 Preservation of assets

572A Powers of court for preservation of assets

(1) This section applies if any of the following proceedings have been started against a marketeer—

(a) a proceeding before the District Court for the grant of an injunction;

(b) a proceeding before the District Court about a contravention of an undertaking;

(c) a marketeer proceeding;

(d) a proceeding before the District Court under part 4 for a civil penalty.

(2) On the chief executive's application, the District Court may make an order mentioned in subsection (3) if satisfied that—

(a) it is necessary or desirable to preserve property held by or for the marketeer because the marketeer is or may become liable under this Act—

(i) to pay an amount to the chief executive; or

(ii) to pay compensation; or

(iii) to refund an amount; or

(iv) to transfer, sell or return other property; and

(b) it will not unduly prejudice the rights and interests of any other person.

(3) The orders the court may make are—

(a) an order prohibiting a person who owes an amount to the marketeer or an associate of the marketeer from paying all or part of the amount to, or to another person at the request of, the marketeer or associate; and

(b) an order prohibiting a person holding property for the marketeer or an associate of the marketeer from transferring all or any of the property to, or to another person at the request of, the marketeer or associate; and

(c) an order prohibiting the taking by any person of the property of the marketeer or an associate of the marketeer out of the State; and

(d) if the marketeer is an individual—an order appointing, with the powers stated in the order, a receiver or trustee of all or part of the property of the marketeer or an associate of the marketeer.

(4) Subject to subsection (5), the order may be expressed to operate—

(a) for a stated period; or

(b) until proceedings under any other provision of this Act in relation to which the order was made have ended.

(5) An application and an order may be made under this section without notice to, and in the absence of, the marketeer or the associate, but in that case the order must not be made for a period of more than 30 days.

(6) A person to whom an order is directed under this section must comply with the order.

Maximum penalty—540 penalty units.

(7) In this section—

associate, of a marketeer, means—

(a) a person holding property for the marketeer; or

(b) if the marketeer is a body corporate—a wholly-owned subsidiary of the marketeer.

prohibit means prohibit absolutely or on conditions.

request includes direction.

take includes the following—

(a) send;

(b) transfer.

transferring means transferring, paying or otherwise parting with possession of.

Part 4 Civil penalties and compensation orders for particular contraventions

572B Application of pt 4

This part applies if a person contravenes section 573A, 573B or 573C.[178]

572C Application for order imposing civil penalties

(1) The chief executive may apply to the District Court (***court***) for an order requiring the person—

(a) to pay to the State a money penalty; or

(b) to pay to a person who suffered financial loss because of the contravention an amount as compensation.

(2) The application may be made together with any other application the chief executive may make under this chapter.

572D Orders District Court may make

(1) This section applies if the court is satisfied the person has contravened section 573A, 573B or 573C.

(2) The court may order the person to pay to the State, as a money penalty, an amount up to the limit of the court's civil jurisdiction for each contravention.

(3) If satisfied another person has suffered financial loss because of the contravention, the court may order the person to pay to

178 Section 573A (Misleading conduct), 573B (Unconscionable conduct) or 573C (False representations and other misleading conduct in relation to residential property)

the other person, as compensation, an amount, decided by the court, up to the limit of the court's civil jurisdiction.

(4) If—

(a) the court proposes to order an individual to pay a money penalty under subsection (2) and compensation under subsection (3); and

(b) the person does not have the resources to pay both;

the court must prefer to make an order for compensation.

(5) If—

(a) the court orders a corporation to pay a money penalty under subsection (2) or compensation under subsection (3); and

(b) the corporation does not have the resources to pay either or both;

the executive officers of the corporation are jointly and severally liable to pay any amount not paid by the corporation.

(6) It is a defence to a liability under subsection (5) for an executive officer to prove that—

(a) if the officer was in a position to influence the conduct of the corporation in relation to the conduct in question—the officer took all reasonable steps to ensure the corporation did not contravene section 573A, 573B or 573C; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the conduct in question.

(7) For subsection (6)(a), it is sufficient for the executive officer to prove that the act or omission that was the conduct in question was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the corporation did not contravene section 573A, 573B or 573C.

572E Criteria for deciding amount to be ordered

To decide an amount a person may be ordered to pay under section 572D, the court must consider—

(a) the person's conduct before and after the contravention; and

(b) whether the conduct was deliberate; and

(c) the period over which the conduct happened; and

(d) the amount of financial loss caused by the contravention; and

(e) any similar past conduct of the person, including conduct happening before the commencement of this section; and

(f) the person's financial position; and

(g) whether the conduct could have been prevented; and

(h) if the person is a corporation—the extent to which the executive officers of the corporation knew or should have known of the contravention; and

(i) any action the person took to remedy the contravention including, for example, compensating persons who suffered financial loss because of it; and

(j) the extent to which the person cooperated with the chief executive to remedy the contravention and prevent future contraventions; and

(k) any other relevant factor.

Chapter 17 General contraventions, evidentiary matters and legal proceedings

Part 1 General contraventions

573 Wrongful conversion and false accounts

(1) This section applies if a licensee, in the performance of the activities of a licensee, receives an amount belonging to someone else.

(2) A licensee who—

(a) dishonestly converts the amount to the licensee's own or someone else's use; or

(b) dishonestly renders an account of the amount knowing it to be false in a material particular;

commits a crime.

Maximum penalty—1000 penalty units or 5 years imprisonment.

(3) For a prosecution under subsection (2)(a), it is enough for the prosecution to prove that the licensee dishonestly converted an amount belonging to someone else to the licensee's own use or someone else's use without having to prove that the amount belonged to a particular person.

(4) In this section—

licensee includes a former licensee and a person who is not licensed, but who acts as a licensee.

573A Misleading conduct

A marketeer must not, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property in Queensland, engage in conduct that is misleading or is likely to mislead.

Note—

For remedies for a contravention, see chapter 16 (Injunctions, undertakings, preservation of assets and civil penalties).

573B Unconscionable conduct

(1) A marketeer must not, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property in Queensland, engage in conduct that is, in all the circumstances, unconscionable.

Note—

For remedies for a contravention, see chapter 16 (Injunctions, undertakings, preservation of assets and civil penalties).

(2) Without limiting the matters to which regard may be had to decide whether a marketeer has contravened subsection (1), regard may be had to—

(a) the relative strengths of the bargaining positions of the marketeer and the buyer of the property; and

(b) whether, because of conduct engaged in by the marketeer, the buyer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the marketeer; and

(c) whether the buyer was able to understand any documents relating to the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property; and

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the buyer or the person acting for the buyer by the marketeer in connection with the marketing of the property; and

(e) the amount for which, and the circumstances under which, the buyer could have acquired an equivalent or similar property from another person; and

(f) the extent to which the marketeer's conduct towards the buyer was consistent with the marketeer's conduct in similar transactions between the marketeer and other like buyers; and

(g) the requirements of any applicable code of conduct; and

(h) the extent to which the marketeer unreasonably failed to disclose to the buyer—

(i) any intended conduct of the marketeer that might affect the interests of the buyer; and

(ii) any risks to the buyer arising from the marketeer's intended conduct, if the risks are risks the marketeer should have foreseen would not be apparent to the buyer; and

(i) the extent to which the marketeer failed to disclose to the buyer—

(i) any relationships of the marketeer to other marketeers in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property; or

(ii) anything required to be disclosed under this Act; and

(j) the extent to which the marketeer was unwilling to negotiate the terms and conditions of any contract for the sale of the property with the buyer; and

(k) whether or not it was reasonably practicable for the buyer to negotiate for the alteration of, or to reject, any of the provisions of the contract for the property; and

(l) whether or not the buyer or a person who represented the buyer was reasonably able to protect the interests of the buyer because of the age or physical or mental condition of the buyer or the person who represented the buyer; and

(m) whether or not, and if so when, the buyer obtained, or an opportunity was made available to the buyer to obtain, independent legal, valuation or other expert advice; and

(n) the extent to which the provisions of the contract and the contract's legal and practical effect were accurately explained to the buyer and whether or not the buyer understood those provisions and their effect; and

(o) whether the marketeer took measures to ensure that the buyer understood the nature and implications of the

transaction and, if so, the adequacy of those measures; and

(p) whether at the time the contract was entered into, the marketeer knew, or could have ascertained by reasonable inquiry of the buyer at the time, that the buyer could not pay in accordance with its terms or not without substantial hardship; and

(q) the extent to which the marketeer and the buyer acted in good faith; and

(r) any other relevant factor.

573C False representations and other misleading conduct in relation to residential property

(1) A marketeer must not, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property in Queensland, represent in any way to someone else anything that is false or misleading.

Note—

For remedies for a contravention, see chapter 16 (Injunctions, undertakings, preservation of assets and civil penalties.

(2) Without limiting subsection (1), a marketeer must not, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property, or the possible sale of residential property in Queensland—

(a) represent that the person has a sponsorship, approval or affiliation the person does not have; or

(b) make a false or misleading representation about—

(i) the nature of the interest in the property; or

(ii) the price payable for the property; or

(iii) the location of the property; or

(iv) the characteristics of the property; or

(v) the use to which the property is capable of being put or may lawfully be put; or

(vi) the existence or availability of facilities associated with the property; or

(vii) the value of the property at the date of the sale; or

(viii) the potential income from the leasing of the property; or

(ix) if the property has been previously sold, the date of the sale and the consideration for the sale; or

(x) how the purchase of the property may affect the incidence of income taxation on the buyer; or

(c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.

Note—

For remedies for a contravention see chapter 16 (Injunctions, undertakings, preservation of assets and civil penalties).

(3) Without limiting subsection (1) or (2), a representation is taken, for the subsection, to be false or misleading if it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the representation indicates that state of affairs does exist.

(4) Also, if a person makes a representation in relation to a matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading.

(5) The onus of establishing that the person had reasonable grounds for making the representation is on the person.

(6) It is not a defence to a proceeding for a contravention of subsection (1) or (2) for the marketeer to prove that an agreement with the person was terminated or that the person did not enter into an agreement because of the representation.

(7) This section does not limit another Act or law about false or misleading representations.[179]

179 See, for example, the *Fair Trading Act 1989*, section 40A (False representations and other misleading or offensive conduct in relation to land—TPA s 53A) and the *Trade Practices Act 1974* (Cwlth), section 53A (False representations and other misleading or offensive conduct in relation to land).

(8) In this section—

false or misleading, in relation to a representation, includes the wilful concealment of a material fact in the representation.

573D Application of ss 573A, 573B and 573C

(1) Sections 573A, 573B and 573C are in addition to, and do not limit, any other law, written or unwritten, about conduct mentioned in them.

(2) Sections 573A, 573B and 573C apply to conduct, whether happening in or outside Queensland, relating to residential property in Queensland.

573E Offensive conduct in relation to residential property

(1) A marketeer must not unduly harass another person in connection with the sale or possible sale of residential property in Queensland.

Maximum penalty—540 penalty units.

(2) In this section—

unduly harass includes the following—

(a) the use of any physical force;

(b) coercion.

574 False representations about property

(1) A licensee or registered employee must not represent in any way to someone else anything that is false or misleading in relation to the letting, exchange or sale of property.

Maximum penalty—540 penalty units.

(2) Without limiting subsection (1), a licensee or registered employee must not, in connection with the sale, or the possible sale, of an interest in land or in connection with the promotion in any way of the sale of an interest in land, represent in any way to someone else anything that is false or misleading in relation to—

(a) the value of the land at the date of sale; or

(b) the potential income from the leasing of the land; or

(c) if the land has been previously sold, the date of the sale and the consideration for the sale; or

(d) how the purchase of the land may affect the incidence of income taxation on the buyer.

Maximum penalty—540 penalty units.

(3) Without limiting subsection (1) or (2), a representation is taken, for the subsection, to be false or misleading if it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the representation indicates that that state of affairs does exist.

(4) Also, if a person makes a representation in relation to a matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading.

(5) The onus of establishing that the person had reasonable grounds for making the representation is on the person.

(6) It is not a defence to a prosecution under subsection (1) or (2) for the defendant to prove that an agreement with the person was terminated or that the person did not enter into an agreement because of the representation.

(7) This section does not limit another Act or law about false or misleading representations.[180]

(8) In this section—

false or misleading, in relation to a representation includes the wilful concealment of a material fact in the representation.

licensee includes a person acting as a licensee, but does not include a commercial agent.

registered employee includes a person acting as a registered employee, but does not include a commercial subagent.

180 See, for example, the *Fair Trading Act 1989*, section 40A and the *Trade Practices Act 1974* (Cwlth), section 53A.

574A Representation of price of property to seller—auctioneer

(1) This section applies if a person wanting to sell residential property (***seller***) asks an auctioneer for information about the price at which residential property that is to be, or may be, offered for sale by auction (***offered property***) is likely to be sold if it is sold by auction.

(2) The auctioneer must give the seller a written notice stating that if the seller does not set a price at which the seller agrees to sell the offered property (***reserve price***), the offered property will be sold for the price offered by the highest of any bids made when the property is auctioned.

Maximum penalty—200 penalty units.

(3) If the seller appoints the auctioneer to sell the offered property, the auctioneer must obtain from the seller before the offered property is auctioned a written notice stating the following—

(a) if the seller sets a reserve price—the reserve price;

(b) if the seller does not set a reserve price—that the seller understands that the offered property will be sold for the highest of any bids made when the offered property is auctioned.

Maximum penalty—200 penalty units.

(4) An auctioneer must not help a seller decide the reserve price for offered property unless, before the seller decides the price, the auctioneer gives the seller—

(a) a copy of a comparative market analysis for the offered property; or

(b) if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the auctioneer decided the market value of the property.

Maximum penalty—540 penalty units.

(5) In this section—

comparative market analysis, for an offered property, means a document comparing the offered property with at least 3 properties sold within the previous 6 months that are of a

similar standard or condition to the offered property and are within 5km of that property.

574B Auctioneer not to indicate reserve or other price to bidder

(1) This section applies if a person (***bidder***) wanting to bid for residential property that is to be, or may be, offered for sale by auction (***offered property***) asks an auctioneer for information about the price at which the offered property is likely to be sold when it is auctioned.

(2) The auctioneer must not in any way disclose to the bidder—

(a) whether the seller has set a reserve price for the offered property under section 574A; or

(b) the reserve price set under section 574A for the offered property; or

(c) an amount the auctioneer considers is a price likely to result in a successful or acceptable bid for the offered property.

Maximum penalty—540 penalty units.

(3) However, the auctioneer does not commit an offence against subsection (2) if, on the seller's written instructions, the auctioneer gives the bidder whichever of the following was given to the seller—

(a) the comparative market analysis for the offered property;

(b) the written explanation showing how the auctioneer decided the market value of the property.

(4) In this section—

comparative market analysis, for offered property, see section 574A.

574C Representation of price of property—real estate agent

(1) This section applies if a person wanting to sell residential property asks a real estate agent for information about the price at which residential property that is to be, or may be,

offered for sale, whether or not by auction, (***offered property***) is likely to be sold.

(2) If the real estate agent decides to give the person the information, the real estate agent must, when giving the person the information, give the person—

(a) a copy of a comparative market analysis for the offered property; or

(b) if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the real estate agent decided the market value of the property.

Maximum penalty—540 penalty units.

(3) In this section—

comparative market analysis, for offered property, see section section 574A.

574D Real estate agent not to indicate reserve price to potential buyer

(1) This section applies if a person wanting to buy residential property (***potential buyer***) asks a real estate agent for information about the price at which residential property that is to be, or may be, offered for sale, whether or not by auction, (***offered property***) is likely to be sold or is, or is likely to be, offered for sale.

(2) If the offered property is to be offered for sale by auction, the real estate agent must not disclose to the potential buyer—

(a) whether the seller has set a reserve price for the offered property; or

(b) the reserve price set for the offered property; or

(c) an amount the real estate agent considers is a price likely to result in a successful or acceptable bid for the offered property.

Maximum penalty—540 penalty units.

(3) If the property is not to be offered for sale by auction and the seller has instructed the real estate agent not to disclose the

price at which the seller is willing to sell the offered property, the real estate agent must not disclose to the potential buyer the price at which the seller is willing to sell the offered property.

Maximum penalty—540 penalty units.

(4) However, the real estate agent does not commit an offence against subsection (2) or (3) if, on the seller's written instructions, the real estate agent gives the potential buyer a copy of whichever of the following was given to the seller—

(a) the comparative market analysis for the offered property;

(b) the written explanation showing how the real estate agent decided the market value of the property.

Maximum penalty—540 penalty units.

(5) In this section—

comparative market analysis, for offered property, see section section 574A.

575 Chief executive's power to ask for substantiation of representations made by licensees or registered employees

(1) This section applies if the chief executive believes, on reasonable grounds, that a licensee or registered employee has made a representation in contravention of section 574(1) or (2).

(2) The chief executive may, by written notice, ask the person to give to the chief executive written proof that supports the representation.

(3) The notice must—

(a) state a day, at least 14 days after the day the notice is given to the person, by which the person must give the proof to the chief executive; and

(b) warn the person it is an offence to fail to respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to respond.

(4) The person must respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to respond.

Maximum penalty—100 penalty units.

(5) It is a reasonable excuse to fail to comply with subsection (4) if complying with the subsection would tend to incriminate the person.

575A Chief executive to ask for substantiation of representations made by marketeers

(1) This section applies if the chief executive believes, on reasonable grounds, that a marketeer has made a representation in contravention of section 573C(1) or (2).

(2) The chief executive may, by written notice, ask the person to give to the chief executive written proof that supports the representation.

(3) The notice must—

(a) state a day, at least 14 days after the day the notice is given to the person, by which the person must give the proof to the chief executive; and

(b) warn the person it is an offence to fail to respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to respond.

(4) The person must respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to respond.

Maximum penalty—540 penalty units.

(5) It is a reasonable excuse to fail to comply with subsection (4) if complying with the subsection would tend to incriminate the person.

576 False representations about mileage

A person must not wilfully represent in any way to someone else anything that is false or misleading about the total distance travelled by a motor vehicle.

Maximum penalty—540 penalty units.

577 Tampering with odometers

(1) A person must not tamper with a motor vehicle's odometer with intent to falsely represent that, at a particular time, the vehicle—

(a) has travelled a distance less than a specified distance; or

(b) has travelled a distance more than a specified distance.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) If a court finds a person guilty of an offence against subsection (1), the court may, on its own initiative or on the application of the prosecution or a person who has suffered loss, order the person who committed the offence to compensate the person who suffered loss for loss resulting from the commission of the offence.

(3) In any proceeding, the distance shown at any time on the odometer tampered with is evidence of a false representation by the person who tampered with the odometer that the vehicle—

(a) has travelled a distance less than a specified distance shown on the odometer; or

(b) has travelled a distance more than a specified distance shown on the odometer.

(4) Subsection (2) does not limit a court's powers under the *Penalties and Sentences Act 1992* or any other law.

578 Offence to charge fee for providing documents etc.

(1) A licensee or a licensee's employee must not charge a fee for the provision, preparation or completion of a document for a transaction relating to, or arising out of, the performance of a licensee's activities.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) Subsection (1) does not limit the *Legal Profession Act 2004*, sections 24 or 25.[181]

(3) This section does not apply to the provision of a security interest certificate under section 233(5) or 295(4).[182]

579 Offence to ask for, or receive, excess or improper remuneration

(1) If an amount is prescribed under a regulation as the maximum amount allowed to a licensee for the performance of a licensee's activities in relation to a stated transaction, a licensee must not ask for, or receive, a commission or reward for the transaction greater than the amount allowed under the regulation.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) If, in a proceeding under this section, an amount is alleged to be payable to the licensee for recouping expenditure lawfully incurred by the licensee in connection with the transaction, the licensee must establish to the court's satisfaction, on the balance of probabilities, that the expenditure was lawfully incurred.

(3) If a licensee is convicted of an offence against subsection (1) or fails to satisfy the court under subsection (2) about expenditure incurred, the convicting court must also order the licensee to refund the amount to which the licensee was not entitled to the person from whom it was obtained.

(4) Subsection (1) does not prevent the licensee asking for or receiving an amount more than the maximum amount allowed under the regulation if the amount is for GST payable for a supply in relation to the transaction.

181 *Legal Profession Act 2004*, sections 24 (Prohibition on engaging in legal practice when not entitled) or 25 (Prohibition on representing or advertising entitlement to engage in legal practice when not entitled)

182 Section 233 (Guarantee of title for motor vehicles) or 295 (Guarantee of title for motor vehicles)

580 Offence to deal with trust account

A person must not operate on a licensee's trust account unless the person is—

(a) the licensee; or

(b) a person actually employed by the licensee and authorised by the licensee to operate on the trust account; or

(c) otherwise permitted under this Act to operate on the licensee's trust account.

Maximum penalty—200 penalty units or 3 years imprisonment.

581 Offence to lend or borrow licence

(1) A licensee must not—

(a) lend or hire out the licensee's licence to someone else; or

(b) notify or advertise that a licence is available for sale, loan or hire, or on another basis, to someone else, whether licensed or not; or

(c) permit or allow someone else to hold out that the person is the holder of the licence issued to the licensee.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A person must not borrow, hire or buy a licensee's licence.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) If a person who is not the holder of an appropriate licence or the licensee's substitute has the effective or apparent management or control of a licensee's business, the licensee is taken to have lent, and the person is taken to have borrowed, the licensee's licence.

582 False or misleading statements

(1) A person must not, for this Act, state anything to an official the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) In this section—

official means—

(a) the chief executive; or

(b) an inspector; or

(c) a public service employee.

583 False or misleading documents

(1) A person must not, for this Act, give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

(a) informs the official, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

(3) A person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

(4) In this section—

official means—

(a) the chief executive; or

(b) an inspector; or

(c) a public service employee.

584 Prohibited practices

(1) A person must not, for reward, supply, or undertake to supply, or advertise, or hold out in any way, that the person will supply to any person addresses or other particulars of—

(a) places of residence that are to let; or

(b) places of residence or land or interests in places of residence or land that are for sale.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) Subsection (1) does not apply to a real estate agent or pastoral house that has been appointed by the landlords or sellers of the places of residence or land or interests in the places of residence or land to perform an activity and has the landlord's or seller's consent to supply the particulars.

(3) A person must not make an unsolicited invitation to another person to attend a property information session unless the person is a property developer or a real estate agent or someone acting for the developer or agent.

Maximum penalty—200 penalty units or 2 years imprisonment.

Part 2 Evidentiary matters

585 Evidence of tampering by a motor dealer or auctioneer

(1) Evidence that a motor vehicle's odometer reading when the vehicle was in the possession of a motor dealer or auctioneer was less than its reading when the dealer or auctioneer took possession of the vehicle is evidence that—

(a) the motor vehicle's odometer was tampered with; and

(b) the dealer or auctioneer contravened section 577(1)(a).[183]

(2) Evidence that a motor vehicle's odometer was tampered with to increase the distance shown on the odometer when the vehicle was in a motor dealer's or auctioneer's possession is evidence that the dealer or auctioneer contravened section 577(1)(b).

(3) In this section—

possession, of a motor vehicle, includes custody and control of the vehicle.

586 Continuing false representation—tampered with odometer

(1) This section applies, in any proceeding, if there is evidence (***relevant evidence***) that a person intentionally tampered with the odometer of a motor vehicle so that it showed that the vehicle at that time—

(a) had not travelled the distance shown on the odometer before it was tampered with; or

(b) had travelled more than the distance shown on the odometer before it was tampered with.

(2) The distance shown at any time afterwards on the odometer is evidence of a false representation by a person at that later time that—

(a) if the relevant evidence relates to subsection (1)(a)—the vehicle had not travelled more than the distance shown on the odometer; or

(b) if the relevant evidence relates to subsection (1)(b)—the vehicle had travelled more than the distance shown on the odometer.

587 Evidentiary provisions

(1) This section applies to a proceeding under this Act.

183 Section 577 (Tampering with odometers)

(2) The appointment or power of an inspector must be presumed unless a party, by reasonable notice, requires proof of—

(a) the appointment; or

(b) the power to do anything under this Act.

(3) A signature purporting to be the signature of the chief executive, a member of the tribunal, the registrar, the presiding case manager or an inspector is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by a person mentioned in subsection (3) and stating any of the following matters is evidence of the matter—

(a) a stated document is—

(i) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or

(ii) a notice, or a copy of a notice, given under this Act; or

(iii) a record, or a copy of a record, kept under this Act; or

(iv) a document, or a copy of a document, kept under this Act;

(b) on a stated day, a stated person—

(i) was, or was not, the holder of a stated licence or registration certificate under this Act; or

(ii) was given a stated notice, order, requirement or direction under this Act.

588 Entries in licensee's documents

An entry in a document kept by or belonging to a licensee or found in the licensee's premises is evidence that the entry has been made by or with the authority of the licensee.

Part 3 Proceedings

589 Proceedings for an offence

(1) Subject to subsection (2), a proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* within the later of the following—

(a) 1 year after the offence is committed;

(b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

(2) A proceeding for an indictable offence may be taken, at the prosecution's election—

(a) by way of summary proceedings under the *Justices Act 1886*; or

(b) on indictment.

(3) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—

(a) for the summary conviction of the person; or

(b) for an examination of witnesses in relation to the charge.

(4) If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

(5) If—

(a) a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted on indictment; or

(b) the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment;

the magistrate—

(c) must not decide the charge as a summary offence; and

(d) must proceed by way of a committal proceeding.

(6) If a magistrate acts under subsection (5)—

(a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and

(b) any evidence brought in the proceeding before the magistrate decided to act under subsection (5) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and

(c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).[184]

(7) The maximum penalty that may be imposed on a summary conviction of an indictable offence is 200 penalty units or 1 year's imprisonment.

(8) In this section—

indictable offence means an offence against this Act for which the maximum penalty of imprisonment is more than 2 years.

590 Responsibility for acts or omissions of representatives

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

184 *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

(4) In this section—

offence includes a contravention of this Act for which an amount may be ordered by the District Court or the tribunal to be paid as a money penalty.

representative means—

(a) of a corporation—an executive officer, employee or agent of the corporation; or

(b) of an individual—an employee or agent of the individual.

state of mind, of a person, includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

591 Executive officers must ensure corporation complies with Act

(1) The executive officers of a corporation must ensure that the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commit an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual or, if the penalty is expressed to be for this section, the expressed penalty.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove that—

(a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer

took all reasonable steps to ensure the corporation complied with the provision; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

(5) For subsection (4)(a), it is sufficient for the executive officer to prove that the act or omission that was the offence was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the corporation complied with the provision.

592 Power of court

(1) A court may, in addition to any other penalty it may impose, order that a licensee's licence or a registered employee's registration certificate be suspended for a stated period or cancelled if the licensee or registered employee has been convicted of an offence against this Act.

(2) The court may also order that a person convicted of an offence against this Act be disqualified from holding a licence or registration certificate under this Act for a stated period or permanently.

(3) The court may make an order under subsection (1) or (2)—

(a) on the chief executive's application; or

(b) on its own initiative.

(4) If an order is made by a court under this section on the court's own initiative, the court must cause a copy of the order to be given to the chief executive.

(5) This section does not apply to an offence against section 572A(6), 573E(1) or 575A(4).[185]

185 Section 572A (Powers of court for preservation of assets), 573E (Offensive conduct in relation to residential property) or 575A (Chief executive to ask for substantiation of representations made by marketeers)

592A Power of court for particular offences

(1) A court may, in addition to any other penalty it may impose on a person convicted of an offence against section 572A(6), 573E(1) or 575A(4), order that—

(a) if the person is a licensee or a registered employee—

(i) the licensee's licence or registered employee's registration certificate be suspended for a stated period or cancelled; or

(ii) the person be disqualified from holding a licence or registration certificate under this Act for a stated period or permanently; or

(b) whether or not the person is a licensee or a registered employee—the person be disqualified from holding a licence or registration certificate under this Act for a stated period or permanently.

(2) The court may also make any other order the tribunal may make in a marketeer proceeding.[186]

(3) However, if the court makes an order for compensation, the court may order the payment of an amount up to the limit of the court's civil jurisdiction.

(4) The court may make an order under this section—

(a) on the chief executive's application; or

(b) on its own initiative.

(5) If an order is made by a court under this section on the court's own initiative, the court must cause a copy of the order to be given to the chief executive.

593 Allegations of false or misleading representations or statements etc.

In any proceeding for an offence against this Act involving a false or misleading statement, representation or entry, or false or misleading information, it is enough for a charge to state

186 For the orders a tribunal may make, see section 530A (Orders tribunal may make in a marketeer proceeding).

that the statement, representation, entry or information was 'false or misleading'.

Chapter 18 General

594 Public warning statements

(1) The Minister or chief executive may make or issue a public statement identifying and giving warnings or information about any of the following—

(a) contraventions of a code of conduct that have resulted in disciplinary action and persons who commit the contraventions;

(b) business practices regulated under this Act that are unfair and persons who engage in the unfair practices;

(c) the commission of offences against this Act and persons who commit the offences.

(2) The statement may identify particular contraventions, business practices, offences and persons.

(3) The Minister or chief executive must not make or issue a statement under this section unless satisfied that it is in the public interest to do so.

595 Civil remedies not affected

Nothing in this Act affects or limits any civil remedy that a person may have against a licensee or another person in relation to any matter.

596 Criminal Proceeds Confiscation Act 2002 not limited

Nothing in this Act limits the *Criminal Proceeds Confiscation Act 2002*.

597 Delegation—chief executive

(1) The chief executive may delegate the chief executive's powers, other than power under section 594, to an appropriately qualified public service employee.

(2) In subsection (1)—

appropriately qualified includes having the qualifications, experience or standing appropriate to exercise the power.

Example of 'standing'—

The level at which a person is employed within the department.

598 Approved forms

(1) Forms may be approved for use under this Act.

(2) A form may be approved by—

(a) if the form is to be used for a proceeding in, or an application to, the tribunal—the chairperson of the tribunal; or

(b) otherwise—the chief executive.

599 Review of Act

(1) The Minister must ensure the operation of this Act is reviewed.

(2) The review must start within 2 years after the commencement of this section.

(3) The Minister must table in the Legislative Assembly a report on the outcome of the review within 3 months after the review is finished.

600 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may be made about the following—

(a) fees, including the refunding of fees;

(b) the rate of commission that may be charged for transactions by licensees;

(c) ways in which amounts may be paid from a trust account;

(d) imposing a penalty for a contravention of a regulation of not more than 20 penalty units;

(e) the audit of trust accounts and documents;

(f) the keeping or destruction of motor vehicle identifiers;

(g) the display at a motor dealer's registered office of the motor dealer's usual hours of business;

(h) imposing time limits within which a del credere agent must pay the purchase price of livestock the agent is authorised to sell to the seller of the livestock;

(i) the financial or insurance protection requirements for del credere agents;

(j) imposing limits on out-of-pocket expenses incurred in the performance of activities under a licence;

(k) the keeping of records, including the form in which a record is kept;

(l) the keeping of receipts and evidence of expenditure;

(m) the length of time a document required to be kept under this Act is to be kept.

602 Act repealed

The *Auctioneers and Agents Act 1971* is repealed.

Chapter 19 Transitional and savings provisions

Part 1 Transitional and savings provisions for repealed Act

603 Definitions for pt 1

In this part—

commencement means commencement of this section.

committee means the auctioneers and agents committee established under the repealed Act.

former fund means the auctioneers and agents fidelity guarantee fund established under the repealed Act.

604 Former fund

(1) The rights and liabilities of the former fund are taken to be the rights and liabilities of the claim fund.

(2) A claim that has been made against the former fund, and not finished before the commencement, continues as if it were a claim against the claim fund.

(3) If, before the commencement, a person could have made a claim against the former fund but did not make the claim, the person may make the claim against the claim fund.

(4) If, before the commencement, the committee had started a proceeding to recover an amount paid out of the former fund, the proceeding is taken to have been started by the chief executive as if the amount had been paid out of the claim fund.

(5) If, had the repealed Act not been repealed, the committee could start a proceeding to recover an amount paid out of the former fund, the chief executive may start the proceeding as if the amount had been paid out of the claim fund.

(6) The repealed Act applies to a proceeding under subsection (4) or (5), with necessary changes, as if the repealed Act had not been repealed.

(7) For applying subsection (3) and this Act, a contravention, stealing or fraudulent misappropriation or misapplication mentioned in section 119(1) of the repealed Act in relation to which the claim arose is taken to be an event mentioned in section 470(1).[187]

605 Subrogation of committee

(1) This section applies if, immediately before the commencement, the committee was subrogated, to a particular extent, to the rights and remedies of a claimant who claimed against the former fund and whose claim has been settled by payment out of the former fund.

(2) The chief executive is taken to be subrogated, to the same extent, to the claimant's rights and remedies and the rights and remedies may be pursued in accordance with the repealed Act, with necessary changes, as if the repealed Act had not been repealed.

(3) An agreement entered into or anything else done by the committee under the subrogation is taken to have been entered into or done by the chief executive.

606 Existing substitute licensees

(1) This section applies to a substitute licensee whose appointment as a substitute licensee was approved before the commencement.

(2) The appointment is taken to have been made under this Act and to be subject to the same conditions as the conditions on which it was made under the repealed Act.

187 Section 119 (Application of fund) of the repealed Act
Section 470 (Claims)

607 Existing licences

(1) This section applies to a person who, immediately before the commencement, held a licence mentioned in column 1 of the following table (a ***column 1 licence***)—

Table

column 1	column 2
commercial agent's licence	property agents and motor dealers licence (commercial agent)
corporation licence (with a director holding a real estate agent's licence)	property agents and motor dealers licence (real estate)
corporation licence (with a director holding a restricted real estate agent's licence)	property agents and motor dealers licence (restricted letting agent)
corporation licence (with a director holding a general auctioneer's licence)	property agents and motor dealers licence (auctioneer)
corporation licence (with a director holding a restricted auctioneer's licence)	property agents and motor dealers licence (auctioneer)
corporation licence (with a director holding a commercial agent's licence)	property agents and motor dealers licence (commercial agent)
corporation licence (with a director holding a motor dealer's licence)	property agents and motor dealers licence (motor dealer)
general auctioneer's licence	property agents and motor dealers licence (auctioneer)
manager's (commercial agency) licence	property agents and motor dealers licence (commercial agent)
manager's (motor dealing) licence	property agents and motor dealers licence (motor dealer)
manager's (real estate agency) licence	property agents and motor dealers licence (real estate)
motor dealer's licence	property agents and motor dealers licence (motor dealer)

Table

column 1	column 2
pastoral house auctioneer's licence	property agents and motor dealers licence (pastoral house auctioneer)
pastoral house corporation licence	property agents and motor dealers licence (pastoral house)
pastoral house director's licence	property agents and motor dealers licence (pastoral house director)
pastoral house manager's licence	property agents and motor dealers licence (pastoral house manager)
real estate agent's licence	property agents and motor dealers licence (real estate)
restricted auctioneer's licence	property agents and motor dealers licence (auctioneer)
restricted real estate agent's licence	property agents and motor dealers licence (restricted letting agent)

(2) The person, on the commencement, is taken to be—

(a) a suitable and eligible person to hold a licence mentioned in column 2 of the table (a ***column 2 licence***) shown opposite the column 1 licence; and

(b) the holder of the column 2 licence.

(3) If the licence held by the person immediately before the commencement was subject to a restriction or condition, the licence the person is taken to hold on the commencement is also taken to be subject to a condition in the same terms, so far as practicable, as the restriction or condition.

(4) If, apart from subsection (2)(a), the person would not, on the commencement, have been suitable to hold the column 2 licence because of a matter or event that happened before the person's licence was last granted, renewed or restored, the matter or event may be disregarded for the purposes of renewal or restoration of the licence after the commencement.

608 Existing certificates of registration

(1) This section applies to a person who, immediately before the commencement held a certificate of registration mentioned in column 1 of the following table (a ***column 1 certificate***)—

Table

column 1	column 2
certificate of registration as a commercial subagent	registration certificate as a commercial subagent
certificate of registration as a real estate agent salesperson	registration certificate as a real estate salesperson
provisional auctioneer's licence	registration certificate as a trainee auctioneer
certificate of registration as a motor salesperson	registration certificate as a motor salesperson

(2) The person, on the commencement, is taken to be—

(a) a suitable and eligible person to hold a registration certificate mentioned in column 2 of the table (a ***column 2 certificate***) shown opposite the column 1 certificate; and

(b) to be the holder of the column 2 certificate.

(3) If the certificate of registrati0on held by the person immediately before the commencement was subject to a restriction or condition, the registration certificate the person is taken to hold on the commencement is also taken to be subject to a condition in the same terms, so far as practicable, as the restriction or condition.

(4) If, apart from subsection (2)(a), the person would not, on the commencement, have been suitable to hold the column 2 certificate because of a matter or event that happened before the person's certificate was last granted, renewed or restored, the matter or event may be disregarded for the purposes of renewal or restoration of the certificate after the commencement.

609 Existing applications

(1) An application made under the repealed Act and not decided on the commencement must be decided under this Act.

(2) If the application is about a column 1 licence or a column 1 certificate, the application is taken to be about a column 2 licence or column 2 certificate shown opposite the column 1 licence or column 1 certificate.

(3) If the application is about a provisional auctioneer's licence, the application is taken to be about a registration certificate as a trainee auctioneer.

(4) Subject to subsection (5), if the application is about the issue, renewal or restoration of a licence or certificate of registration, the provisions of this Act about issuing, renewing, or restoring licences or registration certificates apply to the application.

Example—

Section 22 (Application for licence).

(5) The provisions of this Act dealing with making the application in the approved form and paying the application fee do not apply to the application.

610 Existing objections

(1) This section applies if an objection about the grant, renewal or restoration of a licence or certificate of registration has been made, but not decided, under the repealed Act.

(2) The person making the objection has no right to appear under this Act in relation to the objection, but the chief executive must have regard to the objection when considering the application.

611 Existing exemptions

(1) If, immediately before the commencement, a person was exempted from a provision of the repealed Act for which there is an equivalent provision under this Act, the person is taken to be exempted from the equivalent provision under this Act.

(2) If the exemption under the repealed Act was subject to a condition, the exemption from the equivalent provision under this Act is also taken to be subject to the condition.

612 Existing approved financial institutions

A financial institution that was an approved financial institution under the repealed Act immediately before the commencement, is taken to be an approved financial institution under this Act.

613 Existing agreements with financial institutions

(1) This section applies to an agreement entered into between the registrar and an approved financial institution under the repealed Act about the keeping of general trust accounts by licensees.

(2) The agreement is taken to be an agreement entered into between the chief executive and a financial institution about the keeping of general trust accounts by licensees under this Act.

(3) References in the agreement to the registrar are taken to be references to the chief executive.

(4) References in the agreement to the former fund are taken to be references to the consolidated fund.

614 Existing appointments to act as licensee

(1) An engagement or appointment or an agreement to act as an auctioneer, real estate agent, commercial agent or motor dealer under the repealed Act that is in force immediately before the commencement and complies with the repealed Act continues to be a valid appointment under this Act according to its terms.

(2) However, if the engagement, appointment or agreement is for a sole agency within the meaning of the repealed Act, the engagement, appointment or agreement ends on the earlier of the following days—

(a) the day it ends according to its terms;

(b) a day 60 days after the commencement.

(3) Also, if the engagement, appointment or agreement is for an exclusive agency (as defined under this Act), the engagement, appointment or agreement ends on the earlier of the following days—

(a) the day it ends according to its terms;

(b) a day 60 days after the commencement of this subsection.

615 Existing trust accounts

A general trust account or special trust account opened under the repealed Act is taken to be a general trust account or special trust account under this Act.

616 Existing agreements entered into by committee

(1) This section applies to an agreement entered into, under the repealed Act, between the committee and another entity and in force immediately before the commencement.

(2) The agreement is taken to be an agreement entered into between the chief executive and the other entity under this Act.

(3) References in the agreement to the registrar or committee are taken to be references to the chief executive or, if the context permits, to the tribunal.

617 Existing auditors

(1) This section applies to an auditor appointed by a licensee or applicant for a licence under the repealed Act whose appointment is in force immediately before the commencement.

(2) The auditor is taken to be appointed by the licensee under this Act on the same conditions as the appointment under the repealed Act.

(3) If the appointment of the auditor was approved by the Minister under the repealed Act, section 109,[188] the auditor is taken to be approved by the chief executive under section 394[189] to audit the principal licensee's trust accounts.

618 Existing receivers appointed by committee

(1) A receiver of property appointed by the committee under the repealed Act is taken to be a receiver over the property appointed by the chief executive under this Act.

(2) If the receiver appointed by the committee is in possession of the property immediately before the commencement, the receiver is taken to be in possession of the property under this Act.

619 Existing inspectors

A person who held an appointment as an inspector under the repealed Act immediately before the commencement is taken to be appointed as an inspector under this Act.

620 Registrar's or deputy registrar's acts and decisions

(1) This section applies to an act done or decision made by the registrar, or a deputy registrar, of auctioneers and agents under the repealed Act that may be done lawfully by the chief executive under this Act.

(2) The act or decision is taken to have been done or made by the chief executive under this Act.

621 Continuation of restriction on licensee's remedy for commission etc.

(1) If, before the commencement, a licensee under the repealed Act was engaged or appointed for a particular transaction—

188 Section 109 (Remote localities) of the repealed Act

189 Section 394 (Chief executive to consider application)

(a) section 76[190] of that Act continues to apply to the licensee in relation to the engagement or appointment; and

(b) if the licensee wants to sue for, or recover or retain, a fee, charge or commission payable under the engagement or appointment, the licensee must do so under the repealed Act as if it had not been repealed.

(2) However, subsection (1) does not apply if the licensee and the person with whom the licensee entered into the engagement or appointment decide otherwise by written agreement after the commencement.

622 Disciplinary action

(1) If the committee had started, but not finished, disciplinary action under the repealed Act before the commencement, the action may be finished under that Act as if that Act had not been repealed and the tribunal were the committee.

(2) However, if the committee had started, but not finished, hearing a disciplinary proceeding under the repealed Act before the commencement, the disciplinary proceeding must be reheard under that Act as if that Act had not been repealed and the tribunal were the committee.

623 Appeals

(1) If—

(a) a person had appealed to the District Court under the repealed Act before the commencement against a decision of the committee; and

(b) the appeal had not been decided before the commencement;

the District Court may hear, or continue to hear, and decide the appeal under that Act as if it had not been repealed.

190 Section 76 (Restriction on remedy for commission) of the repealed Act

(2) If—

(a) a person could have appealed to the District Court under the repealed Act before the commencement against a decision of the committee; and

(b) the person had not appealed before the commencement;

the person may appeal under that Act as if it had not been repealed.

(3) For the purpose of rights of appearance before the court on an appeal mentioned in subsection (1) or (2) and for implementing the court's decision on appeal, a decision of the committee is taken to be—

(a) for a decision of a kind that, under this Act, must be made by the chief executive—a decision of the chief executive; or

(b) for a decision of a kind that, under this Act, must be made by the tribunal—a decision of the tribunal.

624 Legal proceedings by or against committee

(1) A legal proceeding by or against the committee that has not been finished before the commencement may be continued and finished by or against the chief executive.

(2) If, because of an event that happened before the commencement, a legal proceeding could have been started by or against the committee, the legal proceeding may be started by or against the chief executive.

625 Provisions for property developers

(1) This section applies to a person who, immediately before the commencement, conducts the business of a property developer or property developer director.

(2) The person is taken to hold a property developer's licence or property developer director's licence under this section if—

(a) the person applies for the licence under chapter 2, part 3;[191] and

(b) the application is made within 60 days after the commencement.

(3) The person is taken to hold the licence until the person's application and any review or appeal in relation to the application is finally decided.

626 Provisions for property developer salespersons

(1) This section applies to a person who, immediately before the commencement, is employed by a property developer and performs an activity that may be performed by the property developer.

(2) The person is taken to hold a registration certificate as a property developer salesperson under this section if—

(a) the person applies for the registration certificate under chapter 3, part 7;[192] and

(b) the application is made within 60 days after the commencement.

(3) The person is taken to hold the registration certificate until the person's application and any review or appeal in relation to the application is finally decided.

627 Provisions for particular motor dealers

(1) This section applies to a person who, immediately before the commencement, carries on the business of negotiating, under a consultancy arrangement, for a person who is not a motor dealer or auctioneer for the purchase or sale of a motor vehicle for the person (the ***activity***).

(2) The person is taken to hold a motor dealer's licence under this section, limited to the carrying on of the activity, if—

191 Chapter 2 (Licensing), part 3 (Applications for licence)

192 Chapter 3 (Employee registration), part 7 (Activities authorised under registration certificate)

(a) the person applies for the licence under chapter 2, part 3;[193] and

(b) the application is made within 60 days after the commencement.

(3) The person is taken to hold the licence until the person's application and any review or appeal in relation to the application is finally decided.

628 Provisions for particular motor salespersons

(1) This section applies to a person who, immediately before the commencement, is employed by a person mentioned in section 627 and performs an activity that may be performed by that person.

(2) The person is taken to hold a registration certificate as a motor salesperson under this section if—

(a) the person applies for the registration certificate under chapter 3, part 7;[194] and

(b) the application is made within 60 days after the commencement.

(3) The person is taken to hold the registration certificate until the person's application and any review or appeal in relation to the application is finally decided.

629 References to repealed Act

In an Act or document, a reference to the repealed Act may, if the context permits, be taken as a reference to this Act.

630 References to former fund

In an Act or document, a reference to the former fund may, if the context permits, be taken as a reference to the claim fund.

193 Chapter 2 (Licensing), part 3 (Applications for licence)

194 Chapter 3 (Employee registration), part 7 (Activities authorised under registration certificate)

630A Provision for particular stolen motor vehicles

(1) This section applies to a claim made against the fund in relation to a purchase of a used motor vehicle within the meaning of the repealed Act from a motor dealer licensed under the repealed Act if—

(a) the person who makes the claim purchased the vehicle before 1 July 2001; and

(b) the person did not gain clear title to the vehicle when the person purchased it because the vehicle was a stolen vehicle; and

(c) a police officer seized the vehicle under the *Police Powers and Responsibilities Act 2000* on or after 1 July 2001; and

(d) the person could not have made a claim against the former fund or the fund within either of the periods mentioned in section 119(5) of the repealed Act because the person did not know the vehicle was a stolen vehicle until after the expiry of the time limit mentioned in section 119(5).

(2) Section 511 applies to the claim as if it were a claim under this Act.

Part 2 Transitional provisions for Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002

631 Transitional provision for relevant contracts mentioned in repealed s 365

(1) This section applies to a relevant contract for chapter 11 if, on the commencement—

(a) the buyer under the contract has the contract, or a copy of the contract, signed by the buyer and the seller; and

(b) the seller has given the buyer a notice in the approved form for the repealed section 365 signed and dated by the seller and declaring the date on which the seller signed the contract; and

(c) the buyer has not given the seller or the seller's agent—

(i) a copy of the signed contract; and

(ii) the notice mentioned in paragraph (b); and

(d) the contract has not been settled or lawfully terminated.

(2) The buyer is taken to be bound under the contract on the earlier of the following days—

(a) the day the buyer would be bound under the contract if repealed section 365 were still in force;

(b) the end of the seventh day after the commencement of this section.

(3) To remove any doubt, it is declared that the cooling-off period for the contract starts on the day the buyer is taken to be bound under the contract.

(4) In this section—

commencement means the commencement of this section.

repealed section 365 means section 365 as in force immediately before the commencement.

632 Transitional provision for warning statements

(1) This section applies to a relevant contract for chapter 11 entered into on or after 1 July 2001 and before the commencement of this section.

(2) The seller or a person acting for the seller who prepared the contract does not commit an offence against section 366(2) if the warning statement was attached to the contract immediately beneath an information sheet if the information sheet was attached as the first or top sheet of the contract.

(3) Also, if the contract has not been settled or lawfully terminated, the buyer can not terminate the contract because of noncompliance with section 366(1) only because a warning statement was attached to the contract immediately beneath an

information sheet if the information sheet was attached as the first or top sheet of the contract.

(4) Subsection (3) has effect despite section 367(2).

(5) In this section—

information sheet means an information sheet under the *Body Corporate and Community Management Act 1997*, section 213(5).[195]

Part 3 Transitional provision for Motor Vehicles Securities and Another Act Amendment Act 2002

633 Continuation of existing statutory warranties

(1) This section applies if, immediately before the commencement of this section, a warranted vehicle was covered by a statutory warranty.

(2) The vehicle does not stop being covered by the statutory warranty only because, after the commencement of this section, the vehicle becomes a written-off vehicle.

(3) This section is subject to section 319.[196]

(4) In this section—

statutory warranty means the warranty under section 242 or 318.

warranty period means the warranty period under section 236 or 314.

195 *Body Corporate and Community Management Act 1997*, section 213 (Information to be given by seller to buyer)

196 Section 319 (Defects not covered by statutory warranty)

Part 4 Transitional provisions for Property Agents and Motor Dealers Amendment Act 2002

634 Application of amendments to claims

(1) The amended chapter 14, part 2 applies to claims made against the fund at any time—

(a) whether before or after the commencement of the amendments of the previous chapter 14, part 2 made by the amending Act; and

(b) irrespective of when any circumstance relating to them happened.

(2) However, the previous chapter 14, part 2 continues to apply for a claim if before 25 November 2002—

(a) an amount was, under section 489,[197] paid from the fund in settlement of the claim; or

(b) the chief executive or the tribunal had decided the claim, but an amount had not yet been paid from the fund in settlement of the claim.

(3) To remove any doubt, it is declared that this section applies to—

(a) a claim mentioned in section 604[198] made against the former fund; and

(b) a claim that could have been made against the former fund.

(4) In this section—

amended chapter 14, part 2 means chapter 14, part 2,[199] as amended by the amending Act.

197 Section 489 (Payment of claims)

198 Section 604 (Former fund)

199 Chapter 14 (Claims against the fund and other proceedings), part 2 (Claims against the fund)

amending Act means the *Property Agents and Motor Dealers Amendment Act 2002*.

previous chapter 14, part 2 means chapter 14, part 2, as in force before the date of assent for the amending Act.

635 Application of liability for payment from the fund

Section 490,[200] as inserted by the *Property Agents and Motor Dealers Amendment Act 2002* applies to any payment from the fund made at any time, whether before or after the commencement of the section.

Part 5 Transitional provision for Tourism, Fair Trading and Wine Industry Development (Miscellaneous Provisions) Act 2005

636 Transitional provision about statutory warranty under former section 242 or 318

(1) Subsection (2) applies if former chapter 7, part 4, other than sections 238, 239 and 241(2),[201] applied to a warranted motor vehicle.[202]

(2) Former chapter 7, part 4, other than sections 238, 239 and 241(2), continues to apply in relation to the vehicle as if the amending Act had not been enacted.

200 Section 490 (Liability for payment from the fund)

201 Chapter 7 (Auctioneers), part 4 (Statutory warranty), sections 238 (Unwarranted and restorable vehicles to be identified when offered for sale), 239 (Announcements before auction) and 241 (Auctioneer to give buyer notice about statutory warranty)

202 See section 237 (Application of pt 4).

(3) Subsection (4) applies if former chapter 9, part 5, other than sections 316 and 317(2),[203] applied to a warranted motor vehicle.[204]

(4) Former chapter 9, part 5, other than sections 316 and 317(2) continues to apply in relation to the vehicle as if the amending Act had not been enacted.

(5) In this section—

amending Act means the *Tourism, Fair Trading and Wine Industry Development (Miscellaneous Provisions) Act 2005.*

former chapter 7, part 4 means chapter 7, part 4 as in force immediately before the commencement of this section.

former chapter 9, part 5 means chapter 9, part 5 as in force immediately before the commencement of this section.

Part 6 Transitional provision for Audit Legislation Amendment Act 2006

637 Continuing auditor may perform certain audits

(1) This section applies if—

(a) before the commencement, a principal licensee appointed a continuing auditor to audit the licensee's trust accounts for an audit period mentioned in chapter 12, part 2, division 3; and

(b) either of the following apply—

(i) the audit period has ended before the commencement and the continuing auditor has not performed the audit;

203 Chapter 9 (Motor dealers), part 5 (Statutory warranty), sections 316 (Unwarranted and restorable vehicles to be identified when offered for sale) and 317 (Motor dealer to give proposed buyer notice about statutory warranty)

204 See section 315 (Application of pt 5).

(ii) the audit period ends on, or within 12 months after, the commencement.

(2) For the purpose of the continuing auditor performing the audit, the pre-amended provision continues to apply as if the *Audit Legislation Amendment Act 2006* had not commenced.

(3) In this section—

commencement means commencement of this section.

continuing auditor means a person mentioned in the pre-amended provision.

pre-amended provision means section 391, definition *qualified auditor*, paragraph (b) or (c), as in force before the commencement.

Part 7 Transitional provisions for Property Agents and Motor Dealers and Other Acts Amendment Act 2006

638 Exemption for liquidators, controllers and receivers

(1) This section applies to the following persons—

(a) a person, appointed under the Corporations Act before the commencement of this section, as a liquidator, or controller of property, of a corporation that is or was authorised under a licence to perform an activity;

(b) a person, appointed under this Act before the commencement of this section, as a receiver of an entity that is or was authorised under a licence to perform an activity.

(2) Section 5A, as in force from the commencement of this section, applies, and is taken always to have applied, to the functions the person performed before the commencement in relation to a business carried on under a licence under this Act.

639 Exemption—livestock sales

Section 8, as in force immediately before the commencement of this section, continues to apply to a del credere agent and an agreement to which that section applied before the commencement as if the *Property Agents and Motor Dealers and Other Acts Amendment Act 2006*, section 6 had not been enacted.

640 References to restricted letting agents

In an Act or document a reference to a restricted letting agent may, if the context permits, be taken to be a reference to a resident letting agent.

641 Existing restricted letting agent licences

(1) This section applies to a person who, immediately before the commencement of this section, held a property agents and motor dealers licence (restricted letting agent).

(2) The person is, on the commencement, taken to hold a property agents and motor dealers licence (resident letting agent).

(3) If the person held the licence immediately before the commencement subject to a restriction or condition, the licence the person is taken to hold on the commencement is also taken to be subject to a condition in the same terms, so far as practicable, as the restriction or condition.

642 Existing eligibility requirements for motor dealer's licence

Section 44, as in force immediately before the commencement of this section, continues to apply to—

(a) an application for a motor dealer's licence made, but not decided, before the commencement; and

(b) the consideration under section 57 of a motor dealer's eligibility on an application for the renewal or restoration of the motor dealer's licence if the licence was in force immediately before the commencement.

643 Transitional provision for s 367

(1) This section applies to a contract relating to a proposed lot under the *Land Sales Act 1984* that—

(a) was entered into before 1 December 2005; and

(b) did not have a warning statement attached to it as required under old section 366 because the warning statement, the information sheet and the contract were given to the buyer by electronic communication; and

(c) was not settled before the commencement of this section.

(2) The buyer under the contract may, after the commencement, terminate the relevant contract under old section 367 because the warning statement was not attached as required under old section 366 by giving signed, dated notice of termination to the seller or the seller's agent, if the notice is given to the seller or the seller's agent before whichever of the following happens first—

(a) the relevant contract settles;

(b) the end of 1 month after the date of assent of the *Property Agents and Motor Dealers and Other Acts Amendment Act 2006*.

(3) If the buyer does not terminate the contract as provided under subsection (2), the buyer's rights under old section 367 to terminate the contract for the reason mentioned in subsection (2) are extinguished.

(4) In this section—

electronic communication see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

information sheet has the meaning given by the *Body Corporate and Community Management Act 1997*, section 213(5) as in force before 1 December 2005.

old section 366 means section 366 as in force before 1 December 2005.

old section 367 means section 367 as in force before 1 December 2005.

Schedule 1 Decisions subject to review

section 501

section 28(2)	(Chief executive must consider suitability of applicants and licensees)
section 49(1)	(Chief executive may issue or refuse to issue licence)
section 53(1)	(Licence—conditions)
section 58(1)	(Chief executive may renew or refuse to renew licence)
section 61(1)	(Chief executive may restore or refuse to restore licence)
section 67(1)	(Chief executive may appoint or refuse to appoint substitute licensee)
section 70(1)	(Amendment of licence conditions)
section 74(2)	(Immediate suspension)
section 86(2)	(Chief executive must consider suitability of applicants)
section 91(1)	(Chief executive may issue or refuse to issue registration certificate)
section 92(1)	(Registration certificate—conditions)
section 95(1)	(Chief executive may renew or refuse to renew registration certificate)
section 98(1)	(Chief executive may restore or refuse to restore registration certificate)
section 101(1)	(Amendment of registration certificate conditions)
section 104(2)	(Immediate suspension)
section 394(1)	(Chief executive to consider application)

Schedule 1 (continued)

section 398(3)	(Chief executive may withdraw approval as approved auditor)
section 412(1)	(Chief executive may freeze licensee's accounts in particular cases)

Schedule 2 Dictionary

section 11

account, for chapter 12, part 4, see section 411.

actually expended, in relation to expenses, means the amount actually incurred after deducting—

(a) the amount of any benefit, received or receivable, directly or indirectly, in connection with the expenses by the person seeking to sue for, recover or retain the expenses; or

(b) if the benefit has no fixed amount—the market value of the benefit.

affected by bankruptcy action, in relation to an individual, means the individual—

(a) is bankrupt; or

(b) has compounded with creditors; or

(c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

application for review see section 501.

approved auditor, for chapter 12, part 2, see section 391.

approved financial institution means a financial institution that—

(a) has been prescribed under a regulation to be a financial institution to which section 410 applies; and

(b) has entered into an agreement under the section.

approved form see section 598.

arrangement includes agreement, promise, scheme, transaction (with or without consideration), understanding and undertaking (whether express or implied).

Schedule 2 (continued)

associate, of a person, means—

(a) a spouse, parent, brother, sister or child of the person; or

(b) a child of the person's spouse.

attached, for chapter 11, see section 364.

attendance notice means an attendance notice issued under this Act.

auctioneer—

(a) generally, see section 205(1); and

(b) for chapter 7, part 4, see section 234.

auctioneer's licence means a property agents and motor dealers licence (auctioneer).

audit month, for chapter 12, part 2, division 3, see section 400.

auditor, for chapter 12, part 2, see section 391.

audit period, for chapter 12, part 2, division 3, see section 400.

audit report, for chapter 12, part 2, division 3, see section 400.

beneficial interest, other than for section 49(6)(b)(i), see section 13.

body corporate means—

(a) a body corporate under the *Building Units and Group Titles Act 1980*; or

(b) a body corporate for a leasehold building units plan under the *South Bank Corporation Act 1989*; or

(c) a body corporate under the *Body Corporate and Community Management Act 1997*.

building complex means—

(a) a building on a single building units plan under the *Building Units and Group Titles Act 1980*; or

Schedule 2 (continued)

(b) a building or buildings on a single group titles plan under the *Building Units and Group Titles Act 1980*; or

(c) a building or buildings shown on a single leasehold building units plan under the *South Bank Corporation Act 1989*; or

(d) a building or buildings on scheme land in a single community titles scheme or a layered arrangement of community title schemes under the *Body Corporate and Community Management Act 1997*.

business address, of a licensee, see section 23(1)(b).

business associate, of an applicant for a licence or a licensee, means a person with whom the applicant or licensee carries on, or intends carrying on, business under a licence.

business day—

(a) for chapter 9, part 4—see section 296; and

(b) for chapter 11—see section 364.

business of letting includes the collecting or receiving of rents by an agent for a principal, whether or not the agent has let the place of residence, land, estate or business concerned.

caravan means a trailer fitted, equipped, or used principally—

(a) for camping; or

(b) as a dwelling; or

(c) for carrying on any trade or business.

civil jurisdiction, in relation to an amount that is the limit of a court's civil jurisdiction, means an amount equal to the maximum amount that may be claimed in a personal action in the civil jurisdiction of the court.

claimant, for chapter 14, see section 469.

claim fund means the claim fund established under section 408.

claim notice, for chapter 14, see section 469.

Schedule 2 (continued)

class A warranted vehicle means a warranted vehicle that—

(a) at the day of its sale, has an odometer reading of less than 160000km; and

(b) was manufactured less than 10 years before the day of sale.

class B warranted vehicle means a warranted vehicle that—

(a) at the day of its sale, has an odometer reading of 160000km or more; or

(b) was manufactured at least 10 years before the day of sale.

commencement, for chapter 19, part 1, see section 603.

commercial agent see section 339(1).

commercial agent's licence means a property agents and motor dealers licence (commercial agent).

commercial subagent means a person who holds a registration certificate as a commercial subagent.

commercial vehicle means a motor vehicle—

(a) built mainly for carrying or hauling goods; or

(b) designed to carry more than 9 persons;

but does not include a utility with a nominal load carrying capacity of 1t or less.

commissioner for fair trading means the commissioner for fair trading under the *Fair Trading Act 1989*.

committee, for chapter 19, part 1, see section 603.

comparable certificate, under the repealed Act, means—

(a) for a registration certificate as a real estate salesperson—a certificate of registration as a real estate agent salesperson granted under the repealed Act;

(b) for a registration certificate as a trainee auctioneer—a provisional auctioneer's licence granted under the repealed Act;

Schedule 2 (continued)

(c) for a registration certificate as a motor salesperson—a certificate of registration as a motor salesperson granted under the repealed Act;

(d) for a registration certificate as a commercial subagent—a certificate of registration as a commercial subagent granted under the repealed Act.

comparable licence, under the repealed Act, means—

(a) for a resident letting agent's licence, any of the following licences granted under the repealed Act—

(i) manager's (real estate agency) licence;

(ii) real estate agent's licence;

(iii) restricted real estate agent's licence; or

(b) for a real estate agent's licence, either of the following licences granted under the repealed Act—

(i) manager's (real estate agency) licence;

(ii) real estate agent's licence; or

(c) for an auctioneer's licence, either of the following licences granted under the repealed Act—

(i) general auctioneer's licence;

(ii) restricted auctioneer's licence; or

(d) for a motor dealer's licence, either of the following licences granted under the repealed Act—

(i) manager's (motor dealing) licence;

(ii) motor dealer's licence; or

(e) for a commercial agent's licence, either of the following licences granted under the repealed Act—

(i) manager's (commercial agency) licence;

(ii) commercial agent's licence.

complaint, for chapter 14, see section 469.

completes a residential property sale see section 261.

Schedule 2 (continued)

computer means a mechanical, electronic or other device for the processing of data.

consignment, for the sale of a motor vehicle, means the delivering of the motor vehicle by a person into the possession of a motor dealer or auctioneer and the appointing of the motor dealer or auctioneer as an agent to sell the vehicle for the vehicle's owner.

conviction includes a plea of guilty or a finding of guilt by a court, but does not include a plea of guilty or a finding of guilt by a court if no conviction is recorded by the court.

***cooling-off period*—**

(a) for chapter 9, part 4, see section 296; and

(b) for chapter 11, see section 364.

corresponding law means a law of another State or New Zealand that provides for the same matter as this Act or a provision of this Act.

criminal history, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than convictions for which the rehabilitation period has expired, and not been revived, under that Act.

Note—

Because of this definition, sections 6, 8, 9 and 10 of the *Criminal Law (Rehabilitation of Offenders) Act 1986* have no relevant operation for the purposes of a person's criminal history under this Act.

defalcation, for chapter 12, part 4, see section 411.

***defect*—**

(a) for chapter 7, part 4, see section 234; and

(b) for chapter 9, part 5, see section 312.

***defect notice*—**

(a) for chapter 7, part 4, see section 234; and

(b) for chapter 9, part 5, see section 312.

Schedule 2 (continued)

del credere agent means a licensee who—

(a) is authorised under the licensee's licence to sell livestock; and

(b) guarantees the payment of the livestock's purchase price to the seller of the livestock.

disclosure statement, for chapter 11, see section 364.

electronic communication, for chapter 11, see section 364.

employ includes engage on a contract for services or commission and use the services of, whether or not for reward.

employed licensee means a licensee who performs the activities of a licensee as the employee of someone else.

employment authority—

(a) for a real estate salesperson, see section 130;

(b) for a pastoral house salesperson, see section 170;

(c) for a trainee auctioneer, see section 207;

(d) for a property developer salesperson, see section 265;

(e) for a motor salesperson, see section 281;

(f) for a commercial subagent, see section 341.

employment register—

(a) of a resident letting agent, see section 124(1);

(b) of a real estate agent, see section 159(1);

(c) of a pastoral house, see section 196(1);

(d) of an auctioneer, see section 253(1);

(e) of a property developer, see section 274(1);

(f) of a motor dealer, see section 329(1);

(g) of a commercial agent, see section 353(1).

exclusive agency see section 19.

executive officer, for a corporation, means any person, by whatever name called and whether or not the person is a

Schedule 2 (continued)

director of the corporation, who is concerned, or takes part, in the management of the corporation.

financial loss, for chapter 14, see section 469.

financier means a corporation whose ordinary business (whether or not it carries on any other business) is providing credit in relation to motor vehicles and that does not carry on the business of dealing with motor vehicles other than for 1 or more of the following purposes—

(a) selling motor vehicles on instalment terms;

(b) hiring motor vehicles under hire-purchase agreements;

(c) putting in place or enforcing securities over motor vehicles;

(d) hiring motor vehicles, if no right to purchase the motor vehicle is included in the hiring of any vehicle;

(e) disposing of motor vehicles acquired by it in connection with a purpose mentioned in paragraphs (a) to (d).

former fund, for chapter 19, part 1, see section 603.

former licensee—

(a) generally, means a person who held a licence under this or the repealed Act; and

(b) for chapter 13, part 3, see section 447.

former registered employee, for chapter 13, see section 447.

fund means the claim fund.

hearing date means a date fixed for a hearing under this Act.

holder—

(a) of an account, for chapter 12, part 4, see section 411; or

(b) of a property agents and motor dealers licence, means the person in whose name the licence is issued; or

(c) of a registration certificate, means the person in whose name the certificate is issued.

in charge see section 14.

Schedule 2 (continued)

information notice, for a decision of the chief executive, is a written notice stating—

(a) the decision; and

(b) the reasons for the decision; and

(c) if the decision is a decision made under a provision specified in schedule 1—that the person to whom the notice is given may apply to have the decision reviewed by the tribunal within 21 days after receiving the notice.

information sheet, for chapter 11, see section 364.

land includes—

(a) a lot or proposed lot under the *Land Title Act 1994*; and

(b) a lot shown on a leasehold building units plan registered or to be registered under the *South Bank Corporation Act 1989*; and

(c) land under the *South Bank Corporation Act 1989*;[205] and

(d) an interest in land.

lawyer means an Australian lawyer who, under the *Legal Profession Act 2004*, may engage in legal practice in this State.

letting includes every form of leasing or letting of places of residence, land, estates, or businesses.

licence means a property agents and motor dealers licence.

licence register see section 80(1).

licensed, in relation to a person, means licensed under this Act.

205 The *South Bank Corporation Act 1989*, section 3 defines land to include—

(a) any estate in, on, over or under land; and

(b) the airspace above the surface of land and any estate in the airspace; and

(c) the subsoil of land and any estate in the subsoil.

Schedule 2 (continued)

licensee—

(a) generally, means the holder of a property agents and motor dealers licence that is in force; and

(b) for chapter 12, part 4, see section 411; and

(c) for chapter 13, see section 447; and

(d) for chapter 14, see section 469.

livestock means horses, cattle, sheep or swine.

market, residential property, means take action to sell the property, other than by appointing a real estate agent, pastoral house or auctioneer to sell the property.

marketeer—

(a) means a person directly or indirectly involved in any way in the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property, alone, or with others under a formal or informal arrangement, and whether or not—

(i) the person derives a direct or indirect benefit from the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property; or

(ii) the way the property is marketed includes offering potential buyers of the property inducements intended to encourage them to purchase the property; or

(iii) any of the persons is licensed or is a registered employee; or

(iv) the sale, or promotion of the sale, or provision of a service in connection with the sale, of property is, or is part of, a business the person ordinarily conducts; and

(b) includes a person who—

(i) causes or arranges for the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property; or

Schedule 2 (continued)

(ii) provides advisory, management, legal, accounting, administrative or other services in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property.

marketeering contravention, for chapter 14, see section 469.

marketeer proceeding see section 500A.

minor claim, against the fund, means a claim of not more than $10000.

misleading includes deceptive.

money, for chapter 12, part 4, see section 411.

motor dealer—

(a) generally, see section 279(1); and

(b) for chapter 9, part 5, see section 312.

motor dealer's licence means a property agents and motor dealers licence (motor dealer).

motor salesperson means a person who holds a registration certificate as a motor salesperson.

motor vehicle see section 15.

non-investment residential property, for chapter 14, see section 469A.

non-refundable deposit, for chapter 9, part 4, see section 296.

obstruct includes hinder, delay and attempt to obstruct.

obtain—

(a) for chapter 5, part 2, division 5, see section 143; and

(b) for chapter 6, part 2, division 4, see section 182; and

(c) for chapter 7, part 2, division 5, see section 220; and

(d) for chapter 9, part 2, division 4, see section 290.

on-sale for chapter 14, part 2, division 4A, see section 488B(1).

Schedule 2 (continued)

open listing see section 16(1).

option to purchase includes a right granted or purportedly granted, but not immediately exercisable, to purchase or to be given an option to purchase.

pastoral house see section 165(1).

pastoral house auctioneer see section 168(1).

pastoral house auctioneer's licence means a property agents and motor dealers licence (pastoral house auctioneer).

pastoral house director see section 166(1).

pastoral house director's licence means a property agents and motor dealers licence (pastoral house director).

pastoral house licence means a property agents and motor dealers licence (pastoral house).

pastoral house manager see section 167(1).

pastoral house manager's licence means a property agents and motor dealers licence (pastoral house manager).

pastoral house officer, of a pastoral house, means—

(a) an executive officer of the pastoral house; or

(b) a pastoral house manager of the pastoral house; or

(c) a pastoral house auctioneer of the pastoral house; or

(d) a pastoral house salesperson of the pastoral house.

pastoral house salesperson means a person who holds a registration certificate as a pastoral house salesperson.

place of residence—

(a) means—

(i) a building or part of a building used, or currently designed for use, as a single dwelling only; and

(ii) any outbuildings or other appurtenances incidental to the use of the building or part as a single dwelling; but

(b) does not include—

Schedule 2 (continued)

(i) a building or part of a building used, or currently designed for use, for temporary accommodation; or

(ii) any outbuildings or other appurtenances incidental to the use of the building or part as temporary accommodation.

Examples of paragraph (b)—

1 Motel

2 Caravan park

3 Hostel.

presiding case manager means the presiding case manager under the *Commercial and Consumer Tribunal Act 2003*.

principal licensee means a licensee that carries on business under the licensee's licence on the licensee's own behalf.

promote, the sale of residential property, means take action to increase awareness of the property with a view to increasing the likelihood of sale.

property agents and motor dealers licence means a property agents and motor dealers licence issued under this Act.

property developer see section 262(1).

property developer director see section 263.

property developer director's licence means a property agents and motor dealers licence (property developer director).

property developer salesperson means a person who holds a registration certificate as a property developer salesperson.

property developer's licence means a property agents and motor dealers licence (property developer).

property information session means a presentation (however described) given to 1 or more persons that has as a significant purpose the purchase of residential property in Queensland by 1 or more persons attending the presentation.

public examination means a public examination conducted under chapter 14, part 5, division 8.

Schedule 2 (continued)

qualified auditor, for chapter 12, part 2, see section 391.

real estate agent see section 128(1).

real estate agent's licence means a property agents and motor dealers licence (real estate agent).

real estate salesperson means a person who holds a registration certificate as a real estate salesperson.

receivership property, for chapter 12, part 4, see section 411.

reference committee means the reference committee established under section 528AA.

registered employee—

(a) generally, means a person registered under this Act as any of the following—

(i) real estate salesperson;

(ii) pastoral house salesperson;

(iii) trainee auctioneer;

(iv) property developer salesperson;

(v) motor salesperson;

(vi) commercial subagent; and

(b) for chapter 13, see section 447.

registered office—

(a) of a resident letting agent, see section 121;

(b) of a real estate agent, see section 156;

(c) of a pastoral house, pastoral house director, pastoral house manager or pastoral house auctioneer, see section 193;

(d) of an auctioneer, see section 250;

(e) of a property developer, see section 271;

(f) of a motor dealer, see section 326;

(g) of a commercial agent, see section 350.

Schedule 2 (continued)

registrar, other than in chapter 19, means the director under the *Commercial and Consumer Tribunal Act 2003*.

registration certificate means a registration certificate issued under section 91.

registration certificate register see section 109(1).

relevant contract, for chapter 11, see section 364.

relevant person, for chapter 14, see section 469.

repairable write-off means a motor vehicle recorded on a TORUM register as a repairable write-off.

repair period—

(a) for chapter 7, part 4, see section 234; and

(b) for chapter 9, part 5, see section 312.

repealed Act means the *Auctioneers and Agents Act 1971*.

representation includes a statement, promise, publication and other representation made in any way.

residential property see section 17.

residential service see the *Residential Services (Accommodation) Act 2002*, schedule.

resident letting agent see section 111.

resident letting agent's business see section 152.

resident letting agent's licence means a property agents and motor dealers licence (resident letting agent).

respondent—

(a) for chapter 14, see section 469; and

(b) for chapter 16, see section 563.

restorable vehicle means a warranted vehicle that is more than 20 years old and is for sale for restoration.

restricted real estate agent's licence means a real estate agent's licence granted under the repealed Act, section 45(3).

reward includes remuneration of any kind including, for example, any fee, commission or gain.

Schedule 2 (continued)

rural land means land used for grazing stock or cultivating crops on a commercial basis.

sale by auction means the sale of property in any way commonly known and understood to be by auction.

security interest certificate means a security interest certificate under the *Motor Vehicles and Boats Securities Act 1986*.

sell includes agree to sell, advertise or display for sale, attempt to sell, have for sale, negotiate for a sale, and in any way be concerned in selling.

serious offence means any of the following offences punishable by 3 or more years imprisonment—

(a) an offence involving fraud or dishonesty;

(b) an offence involving the trafficking of drugs;

(c) an offence involving the use or threatened use of violence;

(d) an offence of a sexual nature;

(e) extortion;

(f) arson;

(g) unlawful stalking.

service provider means—

(a) for a residential service registered under the *Residential Services (Accreditation) Act 2002*—the person registered under that Act as the service provider for the service; or

(b) for another residential service—the person conducting the service.

sole agency see section 19.

statutory warranty—

(a) for chapter 7, part 4, see section 234; and

(b) for chapter 9, part 5, see section 312.

Schedule 2 (continued)

statutory write-off means a motor vehicle recorded on a TORUM register as a statutory write-off.

termination penalty, for chapter 11, see section 364.

TORUM register means a register kept under a regulation under the *Transport Operations (Road Use Management) Act 1995*.

trainee auctioneer means a person who holds a registration certificate as a trainee auctioneer.

transactions register see section 330.

tribunal means the tribunal under the *Commercial and Consumer Tribunal Act 2003*.

trust account—

(a) generally, means a trust account kept under this Act; and

(b) for chapter 12, part 2, division 3, see section 400.

trust money, for chapter 12, part 4, see section 411.

trust property, for chapter 12, part 4, see section 411.

unit sale, for chapter 11, see section 364.

unsolicited invitation see section 18.

unwarranted vehicle means a used motor vehicle that does not have a statutory warranty.

used imported vehicle means a motor vehicle that—

(a) has been imported into Australia under the *Motor Vehicle Standards Act 1989* (Cwlth); and

(b) is intended to be used in transport in Australia within the meaning of that Act;

but does not include a motor vehicle that has been supplied to the market in full volume in Australia within the meaning of that Act and the *Motor Vehicle Standards Regulations 1989* (Cwlth).

used motor vehicle—

(a) generally, means—

Schedule 2 (continued)

(i) a motor vehicle that has, at any time, been licensed or registered, whether under a law of this State or of any other State or Territory; or

(ii) a motor vehicle that, had it not been registered as mentioned in subparagraph (i) for use for demonstration or sales promotion, would have been a new motor vehicle; or

(iii) a used imported vehicle; and

(b) for chapter 9, part 4, see section 296.

***vacant land*—**

(a) for chapter 5, part 2, division 6, see section 147; and

(b) for chapter 6, part 2, division 5, see section 186; and

(c) for chapter 7, part 2, division 6, see section 224.

warning statement, for chapter 11, see section 364.

warranted vehicle means a used motor vehicle other than—

(a) an unregistered motor vehicle that is—

(i) incapable of being registered in Queensland because of its design; or

(ii) a written-off vehicle; or

(b) a motor vehicle sold on consignment, unless the owner of the vehicle is a motor dealer or auctioneer; or

(c) a commercial vehicle; or

(d) a caravan; or

(e) a motor cycle.

***warrantor*—**

(a) for chapter 7, part 4, see section 234; and

(b) for chapter 9, part 5, see section 312.

***warranty advice*—**

(a) for chapter 7, part 4, see section 234; and

(b) for chapter 9, part 5, see section 312.

Schedule 2 (continued)

***warranty period*—**

(a) for chapter 7, part 4, see section 234; and

(b) for chapter 9, part 5, see section 312.

water damaged motor vehicle means a motor vehicle—

(a) that is a water damaged motor vehicle under the *Motor Vehicles and Boats Securities Act 1986*; and

(b) whose identifying particulars are included in the register kept under that Act.

written-off vehicle means a motor vehicle recorded on a TORUM register as—

(a) a repairable write-off; or

(b) a statutory write-off.

Endnotes

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 21 August 2006. Future amendments of the Property Agents and Motor Dealers Act 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key		Explanation	Key		Explanation
AIA	=	**Acts Interpretation Act 1954**	**(prev)**	=	**previously**
amd	=	**amended**	**proc**	=	**proclamation**
amdt	=	**amendment**	**prov**	=	**provision**
ch	=	**chapter**	**pt**	=	**part**
def	=	**definition**	**pubd**	=	**published**
div	=	**division**	**R[X]**	=	**Reprint No.[X]**
exp	=	**expires/expired**	**RA**	=	**Reprints Act 1992**
gaz	=	**gazette**	**reloc**	=	**relocated**
hdg	=	**heading**	**renum**	=	**renumbered**
ins	=	**inserted**	**rep**	=	**repealed**
lap	=	**lapsed**	**(retro)**	=	**retrospectively**
notfd	=	**notified**	**rv**	=	**revised edition**
o in c	=	**order in council**	**s**	=	**section**
om	=	**omitted**	**sch**	=	**schedule**
orig	=	**original**	**sdiv**	=	**subdivision**
p	=	**page**	**SIA**	=	**Statutory Instruments Act 1992**
para	=	**paragraph**	**SIR**	=	**Statutory Instruments Regulation 2002**
prec	=	**preceding**	**SL**	=	**subordinate legislation**
pres	=	**present**	**sub**	=	**substituted**
prev	=	**previous**	**unnum**	=	**unnumbered**

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only

Reprint No.	Amendments to	Effective	Reprint date
1 rv	2001 Act No. 45	1 July 2001	13 July 2001
1A rv	2001 Act No. 61	21 September 2001	5 October 2001
1B rv	2001 Act No. 61	29 October 2001	29 October 2001
1C rv	2002 Act No. 13	24 April 2002	8 May 2002
1D rv	2002 Act No. 19	7 June 2002	21 June 2002

Reprint No.	Amendments included	Effective	Notes
1E rv	2002 Act No. 13	1 July 2002	
1F rv	2002 Act No. 19	23 August 2002	
1G rv	2002 Act No. 50	30 September 2002	
1H rv	2002 Act No. 51	6 December 2002	
1I rv	2002 Act No. 78	13 December 2002	
1J rv	2002 Act No. 68	1 January 2003	
2 rv	2002 Act No. 74	1 April 2003	Revision notice issued for R1 and R2

Reprint No.	Amendments included	Effective	Notes
2A rv	2003 Act No. 22 2003 Act No. 30	1 July 2003	
2B	2003 Act No. 94	3 December 2003	
2C	2003 Act No. 52	1 January 2004	
2D	2003 Act No. 74	1 March 2004	
2E	2004 Act No. 11	1 July 2004	
2F rv	2005 Act No. 14	22 April 2005	
2G	2005 Act No. 61	1 December 2005	
2H	2006 Act No. 9 2006 Act No. 10	15 March 2006	
2I	2006 Act No. 10	21 August 2006	

5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1

6 List of legislation

Property Agents and Motor Dealers Act 2000 No. 62
date of assent 24 November 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2001 (2001 SL No. 54)

amending legislation—

Motor Vehicles Securities and Other Acts Amendment Act 2001 No. 38 pts 1, 5, s 46(1) sch 1
date of assent 7 June 2001
ss 1–2, 35–36, 38–40, 42 (to the extent it ins the def "water damaged motor vehicle") commenced on date of assent
remaining provisions never proclaimed into force and rep 2003 No. 22 s 31

Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3
date of assent 28 June 2001
ss 1–2 commenced on date of assent
sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)
remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

Property Agents and Motor Dealers Amendment Act 2001 No. 61
date of assent 21 September 2001
ss 1–2 commenced on date of assent
ss 11–19 commenced 29 October 2001 (2001 SL No. 189)
remaining provisions commenced on date of assent

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002 No. 13 ss 1, 2(3), pt 17, s 124 sch
date of assent 24 April 2002
ss 1–2 commenced on date of assent
ss 74–78, 81–85, 87–91, 99 commenced 1 July 2002 (2002 SL No. 149)
s 97 commenced 7 June 2002 (2002 SL No. 133)
remaining provisions commenced on date of assent

Residential Services (Accommodation) Act 2002 No. 19 pts 1, 14 div 2
date of assent 17 May 2002
ss 1–2 commenced on date of assent
remaining provisions commenced 23 August 2002 (2002 SL No. 203)

Motor Vehicles Securities and Another Act Amendment Act 2002 No. 50 pts 1, 3
date of assent 24 September 2002
ss 1–2 commenced on date of assent
remaining provisions commenced 30 September 2002 (see s 2)

Tribunals Provisions Amendment Act 2002 No. 51 pts 1, 3
date of assent 24 September 2002
ss 1–2 commenced on date of assent
remaining provisions commenced 6 December 2002 (2002 SL No. 325)

Criminal Proceeds Confiscation Act 2002 No. 68 ss 1–2(1), 339 sch 4
date of assent 29 November 2002
ss 1–2 commenced on date of assent
remaining provisions commenced 1 January 2003 (see s 2(1))

Discrimination Law Amendment Act 2002 No. 74 ss 1–2, 90 sch
date of assent 13 December 2002
ss 1–2 commenced on date of assent
s 90 commenced 31 March 2003 (2003 SL No. 51)
remaining provisions commenced 1 April 2003 (2003 SL No. 51)

Property Agents and Motor Dealers Amendment Act 2002 No. 78
date of assent 13 December 2002
commenced on date of assent

Motor Vehicles Securities and Other Acts Amendment Act 2003 No. 22 ss 1–2, 30 sch
date of assent 9 May 2003
ss 1–2, 30 commenced on date of assent (see s 2(1))
remaining provisions commenced 1 July 2003 (2003 SL No. 115)

Commercial and Consumer Tribunal Act 2003 No. 30 ss 1–2, 169 sch 1
date of assent 23 May 2003
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2003 (see s 2))

Housing Act 2003 No. 52 ss 1–2, 153 sch 2
date of assent 15 September 2003
ss 1–2 commenced on date of assent
remaining provisions commenced 1 January 2004 (2003 SL No. 332)

Manufactured Homes (Residential Parks) Act 2003 No. 74 ss 1–2, 155 sch 1
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Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2003 No. 94 s 1, pt 13
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s 573E ins 2001 No. 61 s 34

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s 574A ins 2006 No. 10 s 84

Auctioneer not to indicate reserve or other price to bidder
s 574B ins 2006 No. 10 s 84

Representation of price of property—real estate agent
s 574C ins 2006 No. 10 s 84

Real estate agent not to indicate reserve price to potential buyer
s 574D ins 2006 No. 10 s 84

Chief executive to ask for substantiation of representations made by marketeers
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s 582 amd 2006 No. 10 s 85

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s 583 amd 2006 No. 10 s 86

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s 587 amd 2002 No. 51 s 41

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s 589 amd 2002 No. 13 s 107

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s 590 amd 2001 No. 61 s 36

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pt 5 (s 636) ins 2005 No. 14 s 2 sch

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PART 7—TRANSITIONAL PROVISIONS FOR PROPERTY AGENTS AND MOTOR DEALERS AND OTHER ACTS AMENDMENT ACT 2006
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prev sch 2 om R1 (see RA s 40)
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def **"actually expended"** ins 2005 No. 14 s 2 sch
def **"associate"** sub 2002 No. 74 s 90 sch
def **"attached"** ins 2005 No. 61 s 65
def **"attendance notice"** sub 2001 No. 61 s 39
def **"beneficial interest"** sub 2005 No. 14 s 2 sch
def **"civil jurisdiction"** ins 2001 No. 61 s 39(2)
def **"commencement"** amd 2002 No. 13 s 124 sch
def **"commissioner for fair trading"** ins 2002 No. 51 s 42(1)

def **"committee"** amd No. 13 s 124 sch
def **"comparable licence"** amd 2006 No. 10 s 88(3)
def **"contract"** om 2001 No. 61 s 39(1)
def **"disclosure statement"** ins 2005 No. 61 s 65
def **"electronic communication"** ins 2005 No. 61 s 65
def **"employment register"** amd 2006 No. 10 s 88(4)
def **"former fund"** amd 2002 No. 13 s 124 sch
def **"hearing date"** ins 2001 No. 61 s 39(2)
def **"information sheet"** ins 2005 No. 61 s 65
def **"land"** amd 2006 No. 10 s 88(5)
def **"lawyer"** ins 2004 No. 11 s 596 sch 1
def **"livestock"** sub 2002 No. 13 s 124 sch
def **"marketeer"** ins 2001 No. 61 s 39(2)
def **"marketeering contravention"** ins 2002 No. 78 s 17
def **"marketeer proceeding"** ins 2001 No. 61 s 39(2)
def **"minor claim"** amd 2006 No. 10 s 88(6)
def **"non-investment residential property"** ins 2002 No. 78 s 17
def **"on-sale"** ins 2002 No. 78 s 17
def **"presiding case manager"** ins 2002 No. 51 s 42(1)
amd 2003 No. 30 s 169 sch 1
def **"promote"** ins 2001 No. 61 s 39(2)
def **"Property Agents and Motor Dealers Tribunal"** om 2003 No. 30 s 169 sch 1
def **"property information session"** sub 2001 No. 61 s 39
def **"public examination"** ins 2002 No. 51 s 42(1)
def **"reference committee"** ins 2002 No. 51 s 42(1)
def **"registered office"** amd 2006 No. 10 s 88(7)
def **"registrar"** ins 2002 No. 51 s 42(1)
amd 2003 No. 30 s 169 sch 1
def **"repairable write-off"** ins 2002 No. 50 s 15(1)
def **"residential service"** ins 2002 No. 19 s 145
sub 2006 No. 10 s 88(1)–(2)
def **"resident letting agent"** ins 2006 No. 10 s 88(2)
def **"resident letting agent's business"** ins 2006 No. 10 s 88(2)
def **"resident letting agent's licence"** ins 2006 No. 10 s 88(2)
def **"restorable vehicle"** ins 2006 No. 10 s 88(2)
def **"restricted letting agent"** om 2006 No. 10 s 88(1)
def **"restricted letting agent's business"** om 2006 No. 10 s 88(1)
def **"restricted letting agent's licence"** om 2006 No. 10 s 88(1)
def **"security interest certificate"** amd 2003 No. 22 s 30 sch
def **"service provider"** ins 2002 No. 19 s 145
def **"statutory write-off"** ins 2002 No. 50 s 15(1)
def **"TORUM register"** ins 2002 No. 50 s 15(1)
def **"tribunal"** sub 2003 No. 30 s 169 sch 1
def **"unit sale"** ins 2005 No. 61 s 65
def **"used imported vehicle"** ins 2003 No. 94 s 74(1)
def **"used motor vehicle"** amd 2003 No. 94 s 74(2); 2006 No. 10 s 88(8)–(9)
def **"warranted vehicle"** amd 2002 No. 50 s 15(2); 2006 No. 10 s 88(10)–(11)

def **"water damaged motor vehicle"** ins 2001 No. 38 s 42
amd 2003 No. 22 s 30 sch
def **"written-off vehicle"** ins 2002 No. 50 s 15(1)

8 List of forms notified or published in the gazette

(The following information about forms is taken from the gazette. Because failure to notify or publish a form in the gazette does not invalidate the form, it may be necessary to check with the relevant government department for the latest information about forms (see SIA s 58(8)).)

Form 1 Version 2—Application for a Property Agents and Motor Dealers Licence
pubd gaz 28 June 2002 p 873

Form 1-1 Version 4—Application for Individual's Licence
pubd gaz 21 July 2006 p 1366

Form 1-2 Version 4—Application for Corporation's Licence
pubd gaz 21 July 2006 p 1366

Form 1-3 Version 4—Application for Resident Letting Licence
pubd gaz 21 July 2006 p 1366

Form 1-4 Version 3—Application for Pastoral House Licence
pubd gaz 21 July 2006 p 1366

Form 2 Version 2—Application for Renewal or Restoration of a Property Agents and Motor Dealers Licence
pubd gaz 28 June 2002 p 873

Form 2 Version 6—Renewal Notice—Property Agents and Motor Dealers Licence
pubd gaz 11August 2006 p 1713

Form 2 Version 6—Restoration Notice—Property Agents and Motor Dealers Licence
pubd gaz 11August 2006 p 1713

Form 3 Version 6—Application for A Property Agents and Motor Dealers Registration Certificate
pubd gaz 21 July 2006 p 1366

Form 4 Version 2—Application for Renewal or Restoration of a Property Agents and Motor Dealers Registration Certificate
pubd gaz 28 June 2002 p 873

Form 4 Version 5—Renewal Notice—Property Agents and Motor Dealers Registration Certificate
pubd gaz 11August 2006 p 1713

Form 4 Version 5 Restoration Notice—Property Agents and Motor Dealers Registration Certificate
pubd gaz 11August 2006 p 1713

Form 11 Version 10—Application for Appointment/Extension of Appointment of Substitute Licensee
pubd gaz 21 July 2006 p 1366

Form 14 Version 1—Application For Approval As An Auditor
pubd gaz 21 July 2006 p 1365

Form 20a Version 1—Appointment of Agent—Letting and Property Management
pubd gaz 5 July 2002 p 960

Form 22a Version 1—Appointment of Real Estate Agent (Sales and Purchases)
pubd gaz 5 July 2002 p 960

Form 24a Version 1—Appointment to Act as Auctioneer
pubd gaz 5 July 2002 p 960

Form 25 Version 2—Sole or Exclusive Agency Notice for Sale of Property (Pastoral House)
pubd gaz 14 July 2006 p 1267

Form 26 Version 4—Appointment to Act as Pastoral House
pubd gaz 14 July 2006 p 1267

Form 27b Version 2—Selling Agent's Disclosure to Buyer
pubd gaz 7 June 2002 p 571

Form 30a Version 2—Warning Statement
pubd gaz 7 June 2002 p 571

Form 30b Version 1—Warning Statement
pubd gaz 5 July 2002 p 960

Form 31a—Declaration by Seller (Sale of Residential Property)
pubd gaz 16 November 2001 p 976

Form 32a—Lawyer's Certifications
pubd gaz 16 November 2001 p 976

Form 42 Version 3—Statutory Warranty by an Auctioneer
pubd gaz 14 July 2006 p 1267

Form 50 Version 4—Claim Against the Claim Fund
pubd gaz 4 August 2006 p 1609

Form 50-1 Version 3—Claim For a Marketeering Contravention
pubd gaz 4 August 2006 p 1610

Form PAMD 20—Appointment to Act as Restricted Letting Agent
pubd gaz 6 July 2001 pp 915–6

Form PAMD 20a Version 2—Appointment of Agent (Letting and Property Management)
pubd gaz 5 August 2005 p 1214

Form PAMD 21—Sole or Exclusive Agency Notice for Sale of Property (Real Estate Agent)
pubd gaz 6 July 2001 pp 915–6

Form PAMD 21a Version 2—Appointment of Real Estate Agent (Commercial and Industrial Sales, Leasing and Property Management)
pubd gaz 5 August 2005 p 1214

Form PAMD 22—Appointment to Act as Real Estate Agent
pubd gaz 6 July 2001 pp 915–6

Form PAMD 22a Version 2—Appointment of Real Estate Agent (Sales and Purchases)
pubd gaz 5 August 2005 p 1214

Form PAMD 23 Version 3—Reappointment of Real Estate Agent, Pastoral House or Auctioneer
pubd gaz 16 April 2004 p 1475

Form PAMD 24—Appointment to Act as Auctioneer
pubd gaz 6 July 2001 pp 915–6

Form PAMD 24a Version 2—Appointment to Act as Auctioneer
pubd gaz 5 August 2005 p 1214

Form PAMD 25—Sole or Exclusive Agency Notice for Sale of Property (Pastoral House)
pubd gaz 6 July 2001 pp 915–6

Form PAMD 26 Version 3—Appointment to Act as Pastoral House
pubd gaz 5 August 2005 p 1214

Form PAMD 27—Disclosure to Buyer (By a Real Estate Agent, Real Estate Salesperson or Property Developer)
pubd gaz 6 July 2001 pp 915–6

Form PAMD 28 Version 3—Disclosure of Beneficial Interest to Seller (By a Real Estate Agent, Real Estate Salesperson, Auctioneer, Trainee Auctioneer, Pastoral House or Pastoral House Officer)
pubd gaz 5 August 2005 p 1214

Form PAMD 29—Warning Statement (For Sale of Residential Property No Cooling-Off Period)
pubd gaz 6 July 2001 pp 915–6

Form PAMD 30—Warning Statement (For Sale of Residential Property Cooling-Off Period)
pubd gaz 6 July 2001 pp 915–6

Form PAMD 30c Version 3—Warning Statement
pubd gaz 5 August 2005 p 1214

Form PAMD 31—Declaration by Seller Sale of Residential Property
pubd gaz 6 July 2001 pp 915–6

Form PAMD 32—Lawyer's Certificate Waiving Cooling-Off Period
pubd gaz 6 July 2001 pp 915–6

Form PAMD 32a Version 4—Lawyer's Certifications
pubd gaz 5 August 2005 p 1214

Form PAMD 33—Lawyer's Certificate Shortening Cooling-Off Period
pubd gaz 6 July 2001 pp 915–6

Form PAMD 34 Version 3—Appointment of Motor Dealer to Sell a Motor Vehicle on Consignment
pubd gaz 5 August 2005 p 1214

Form PAMD 35 Version 3—Disclosure of Beneficial Interest to Seller (By a Motor Dealer or Motor Salesperson)
pubd gaz 5 August 2005 p 1214

Form PAMD 36 Version 3—Guarantee of Title to Buyer (By a Motor Dealer)
pubd gaz 5 August 2005 p 1214

Form PAMD 37/38—The Important Pre-Purchase Information Cooling Off & Statutory Warranty
pubd gaz 14 May 2004 p 108

Form PAMD 39—Option to Purchase During Cooling-Off Period
pubd gaz 6 July 2001 pp 915–6

Form PAMD 40—Guarantee of Title (By an Auctioneer)
pubd gaz 6 July 2001 pp 915–6

Form PAMD 41—Buyer's Acknowledgment of Receipt of Documents
pubd gaz 6 July 2001 pp 915–6

Form PAMD 42—Statutory Warranty by an Auctioneer
pubd gaz 6 July 2001 pp 915–6

Form PAMD 50 Version 2—Claim Against the Claim Fund
pubd gaz 26 March 2004 p 1166

Form PAMD 51 Version 1—Notice of Intention to Claim for a Marketeering Contravention
pubd gaz 26 March 2004 p 1166

Form PAMD 52 Version 2—Application to Have Claim Determined
pubd gaz 26 March 2004 p 1166

Form PAMD 53 Version 2—Claim Out of Time Notice
pubd gaz 26 March 2004 p 1166

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