

Queensland



AUCTIONEERS AND AGENTS ACT 1971

**Reprinted as in force on 10 November 1997
(includes amendments up to Act No. 40 of 1997)**

Reprint No. 4

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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



AUCTIONEERS AND AGENTS ACT 1971

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	9
2	Definitions	9
3	Application of provisions about auctioneers and auctions	15
4	Application of provisions about real estate agents, commercial agents and motor dealers	16
5	Effect of Act on certain other laws	16
6	Surrender of licence not cancellation	17
7	Exemptions	17
PART 2—THE COMMITTEE		
8	Auctioneers and agents committee	17
9	Vacation of office	18
10	Filling of vacancy	19
11	Meetings	19
12	Taking evidence	19
13	Powers of committee	19
14	Subcommittees	20
15	Exclusion of liability	21
16	Registrar and officers	21
17	Appeals from committee	21
PART 3—LICENCES		
18	No person to act without a licence	23
19	Corporation licence	24
20	Person deemed to act as licensee	27

21	Licensee to be in charge of principal place of business	28
22	Each separate place of business to be in the charge of licensee or licensed manager	28
23	Franchising agreement	30
24	Classes of licences	31
25	Application for licence	32
26	Grant of licence	33
27	Restoration of licence	36
28	Fees for licences	36
29	Cancellation of licences generally	38
30	Register	40

PART 4—REGISTRATION OF SALESPERSONS ETC.

31	Certain employees to be registered	40
32	Application for registration	42
33	Grant of registration	43
34	Restoration of certificate	45
35	Fees	46
36	Cancellation of registration generally	47
37	Record of registration	48
38	Restriction on employment of certain other persons	49

**PART 5—AUCTIONEERS, REAL ESTATE AGENTS,
COMMERCIAL AGENTS AND MOTOR DEALERS**

Division 1—Auctioneers

39	General auctioneers' licences	50
40	Provisional auctioneers' licences	51
41	Restricted auctioneers' licences	52
42	Bogus advertisements	53
43	Sales of livestock	54
44	Code of professional conduct of auctioneers	55

Division 2—Real estate agents

45	Real estate agents' licences	55
46	Sole agencies, multiple listings etc.	57
47	Bogus advertisements	58

48	Code of professional conduct of real estate agents	58
	<i>Division 3—Commercial agents</i>	
49	Commercial agents' licences	58
50	Licence not to confer additional powers	59
51	Production of licences etc.	59
52	Unlawful entry	60
53	Misrepresentation	60
54	Falsely pretending to be a commercial agent	60
55	Debtors not to be charged expenses of debt collecting	60
56	Code of professional conduct of commercial agents	61
	<i>Division 4—Motor dealers</i>	
57	Motor dealers' licences	62
58	Register to be kept by licensees	62
59	Inspection of used motor vehicles	63
60	Guarantee of title	63
61	Statement of vendor	64
62	Each place of business to be approved	64
63	Bogus advertisements	64
64	Tampering with odometers	65
65	Evidence of tampering by a motor dealer	65
66	Code of professional conduct of motor dealers	66
67	Production of licences etc.	66
68	Transactions in used motor vehicles to be notified	66
	<i>Division 5—General</i>	
69	Restriction on agents purchasing or selling property	67
70	When agent prohibited from having interest in option to purchase land	69
71	Beneficial interest	70
72	False representations as to property	72
73	Representations as to availability of finance	74
74	Lands not lawfully usable for residential purposes	77
75	When the Minister may cancel licences	80
76	Restriction on remedy for commission	82

77	Offence to charge fee for preparing document	83
78	Offence to demand excess or improper remuneration	83
79	Prohibited practices	84
80	Prohibition of contracting out	85
81	Failure to comply with court order	85
82	Appointment of substitute licensee	86
83	Death of licensee	88
84	Effect of disqualification on membership of corporation or partnership . . .	89
85	Lending licence or certificate of registration	89
86	Ceasing to be licensed or registered	89
87	Failure to deliver up licence or certificate of registration	90
88	Registered office and address	90
89	Publication of name of licensee	91

PART 6—DISCIPLINARY PROCEEDINGS

90	Interpretation of part	93
91	Grounds for exercise of disciplinary powers against licensed or registered individual	93
92	Grounds for exercise of disciplinary powers against corporation	94
93	Commencement of disciplinary proceedings	95
94	Copy of complaint to executive officer	96
95	Hearing	96
96	Disciplinary powers of committee	97
97	Recovery of fine or costs	98
98	Disqualification of unlicensed executive officer	99
99	Committee to give reasons	99
100	Surrender of cancelled licence or certificate of registration	99
101	Suspension of licence or certificate of registration	100
102	Effect of order of suspension	101

PART 7—ACCOUNTS AND FUNDS

Division 1—Trust accounts

103	Exemptions	102
104	Application of trust money	102
105	Account of money received and its application	106

Auctioneers and Agents Act 1971

106	Wrongful conversion and false accounts	106
107	Trust accounts of employers	106
108	Appointment of auditors	107
109	Remote localities	108
110	Audit of trust accounts	108
111	Inspection, audit etc. by registrar or inspector	111
112	Duties of managers of financial institutions	114
113	Entries in licensee's books deemed made by licensee	115
	<i>Division 2—Auctioneers and agents fidelity guarantee fund</i>	
114	Auctioneers and agents fidelity guarantee fund	116
115	Contributions to fund	117
116	Additional levies	118
117	Registrar may enter into agreements with financial institutions	118
118	Interest on money in the fund	119
119	Application of fund	119
120	Claims against the fund	121
121	Advertisement relating to defaulting licensee and claims	123
122	Distribution from fund	123
123	Proceedings against the committee	124
124	Subrogation	124
125	Directors to compensate fund	124
126	Committee may require production of documents	125
127	Insufficiency of fund	125
128	Freezing of trust accounts and ultimate disposal of trust money of defaulting licensees	125
	<i>Division 3—Receivers</i>	
129	Interpretation	128
130	Appointment of receiver in certain cases	129
131	Application for appointment of receiver	130
132	Receiver may require delivery of property to receiver	131
133	Receiver may forbid withdrawal of money from financial institution	131
134	Receiver may take possession of property	132
135	Improperly withdrawing money or destroying or concealing property	133

136	Power of receivers to deal with property	133
137	Property claimed by licensee	134
138	Liens for costs on property held by receiver	134
139	Application for termination of appointment of receiver	135
140	Property not dealt with by receiver	136
141	Receiver may invest money in receiver's hands	136
142	Remuneration of receiver and expenses of receivership	137
143	Claim or charge against receiver may be paid from the fund	137
144	Reopening of agreement as to receiver's remuneration	137
145	Court may review receiver's expenses	138
146	Receiver not deemed to be personal representative	138
147	Property held by receiver to be free from execution or attachment	139
148	Returns by receiver	139

PART 8—PASTORAL HOUSES

149	Interpretation	139
150	Pastoral house corporation licence	140
151	Licensed pastoral house may act as real estate agent and auctioneer	140
152	Pastoral house corporation licence deemed to be corporation licence	141
153	Pastoral house director's licence, pastoral house manager's licence and pastoral house auctioneer's licence	141
154	Holder of pastoral house director's licence may act as real estate agent	142
155	Pastoral house director's licence deemed to be real estate agent's licence	142
156	Holder of pastoral house manager's licence may act as holder of manager's (real estate agency) licence	142
157	Pastoral house manager's licence deemed to be manager's (real estate agency) licence	143
158	Holder of pastoral house auctioneer's licence may act as auctioneer	143
159	Pastoral house auctioneer's licence deemed to be general auctioneer's licence	143
160	Licence to be endorsed with name of pastoral house	143
161	Surrender of licence	143
162	Licence holder to act only for pastoral house endorsed on licence	144
163	Committee may grant licences subject to conditions	144

164	Employee may act as real estate salesperson	145
165	Fees and contributions for licences	145
166	Pastoral house to notify registrar	146

PART 9—GENERAL

167	Proof that a person is or is not licensed	146
168	Civil remedies not affected	146
169	Offences by corporations	146
170	Offences generally	147
171	Service of documents	148
172	References to repealed Act	148
173	Approval of forms	148
174	Regulation making power	148

ENDNOTES

1	Index to endnotes	152
2	Date to which amendments incorporated	152
3	Key	153
4	Table of earlier reprints	153
5	Tables in earlier reprints	154
6	List of legislation	154
7	List of annotations	157
8	Table of renumbered provisions	170
9	Transitional and savings provisions	177

AUCTIONEERS AND AGENTS ACT 1971

[as amended by all amendments that commenced on or before 10 November 1997]

An Act to consolidate and amend the law relating to auctioneers, real estate agents, debt collectors and motor dealers

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Auctioneers and Agents Act 1971*.

Definitions

2. In this Act—

“approved financial institution” means a financial institution that—

- (a) has been prescribed by regulation to be a financial institution to which section 117¹ applies; and
- (b) has entered into an agreement under the section.

“approved form” see section 173.²

“auctioneer” means any person who sells or attempts to sell or offers for sale or resale any property whether the property of the auctioneer or of any other person by way of auction.

“business of letting” includes the collecting or receiving of rents by an agent for a principal, whether or not the agent has let the house, land, estate or business concerned.

¹ Section 117 (Registrar may enter into agreements with financial institutions)

² Section 173 (Approval of forms)

Auctioneers and Agents Act 1971

“caravan trailer” means any trailer fitted, equipped, or used principally for camping or as a dwelling or for carrying on any trade or business.

“certificate of registration” means a certificate of registration and any renewal issued or deemed to continue in force under this Act and in force at any material time; any endorsements made under this Act on any certificate of registration shall be regarded as forming part of that certificate of registration.

“commercial agent” means any person (whether or not the person carries on any other business) who, whether as principal or agent, exercises or carries on or advertises or notifies or states that the person exercises or carries on or that the person is willing to exercise or carry on or in any way holds the person out as ready to undertake any of the functions of—

- (a) ascertaining the whereabouts of or repossessing any goods or chattels which are the subject of a hire-purchase agreement or a bill of sale or a chattel lease agreement; or
- (b) collecting or requesting payment of debts; or
- (c) serving any writ, summons or other process;

on behalf of any other person or persons for or in consideration of any payment or other remuneration (whether monetary or otherwise), but does not include a person who—

- (d) undertakes any such functions as a representative of Her Majesty; or
- (e) holds a real estate agent’s licence under this Act and undertakes such functions in the person’s capacity as such licence holder; or
- (f) is employed merely as a clerk or servant; or
- (g) is a registered life assurance company or friendly society, or a financial institution or trustee company; or
- (h) is a solicitor or public accountant acting in the practice of the solicitor’s or public accountant’s profession; or
- (i) is a bailiff appointed under or whose appointment as a bailiff is continued under the *Sheriffs Act 1875*, the *District Courts Act 1967* or the *Magistrates Courts Act 1921* while the bailiff is performing any of the functions referred to in paragraph (c).

Auctioneers and Agents Act 1971

“commercial subagent” means any person in the direct employ of or acting for or by arrangement with a commercial agent who for salary, wages, commission, or other remuneration of any kind, exercises or carries on for that commercial agent any of the functions of a commercial agent, but does not include a person whose duties when employed by a commercial agent consist of no more than clerical or secretarial work or the receipt in the office of the commercial agent of money payable to that commercial agent in the course of the person’s business.

“committee” means the auctioneers and agents committee constituted under this Act.

“court” means a Magistrates Court within the meaning of the *Justices Act 1886* and constituted by a stipendiary magistrate sitting alone.

“deputy registrar” means a deputy registrar of auctioneers and agents appointed under this Act.

“employee” includes any person employed whether on salary, wages, bonus, commission, fees, allowance, or other remuneration of any kind.

“executive officer”, in relation to a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

“financier” means a corporation whose ordinary business (whether or not it carries on any other business) is that of providing credit and which does not carry on the business of buying, selling or exchanging motor vehicles except only for 1 or more of the following purposes—

- (a) for the purpose of selling motor vehicles on instalment terms;
- (b) for the purpose of hiring motor vehicles under hire-purchase agreements;
- (c) for the purpose of effectuating or enforcing securities over motor vehicles;
- (d) for the purpose of the hiring where the right to purchase the motor vehicle is not included in that hiring of motor vehicles;
- (e) for the purpose of disposing of motor vehicles acquired by it in

Auctioneers and Agents Act 1971

connection with any of the purposes referred to in paragraphs (a) to (d).

“fund” means the auctioneers and agents fidelity guarantee fund established under this Act.

“land” means land held in fee simple or for an estate of leasehold, and includes a lot shown on a building units plan registered under the *Building Units and Group Titles Act 1980* and that which will become a lot shown on such a plan upon registration of the plan under that Act, and includes land as defined in the *South Bank Corporation Act 1989*, section 4 including a lot shown on a leasehold building units plan under that Act and that which will become a lot upon registration of a leasehold building units plan under that Act.

“letting” includes every form of leasing or letting of houses, land, estates, or businesses.

“licence” means a licence, and any renewal of a licence, issued or deemed to be issued under this Act and in force at any material time; any endorsements made under this Act, or under the repealed Acts, on any licence shall be regarded as forming part of that licence.

“licensee” means the holder of a licence.

“motor dealer” means any person, other than a financier, who—

- (a) on the person’s own behalf, and either alone or in connection with any other business, exercises or carries on or advertises or notifies or states that the person exercises or carries on or that the person is willing to exercise or carry on or in any way holds the person out as ready to undertake the business of—
 - (i) acquiring used motor vehicles for sale; or
 - (ii) acquiring and breaking-up used motor vehicles for sale, piecemeal; or selling (including the letting or selling upon a hire-purchase agreement within the meaning of the *Hire-purchase Act 1959*) used motor vehicles, whether as integral units, or piecemeal; or
- (b) as an agent for others, and whether on commission or for or in expectation of any fee, gain, or reward and either alone or in connection with any other business, and either generally or in respect of any 1 transaction, exercises or carries on or advertises

Auctioneers and Agents Act 1971

or notifies or states that the person exercises or carries on or that the person is willing to exercise or carry on or in any way holds the person out as ready to undertake the business, of buying or selling (including the letting or selling upon a hire-purchase agreement within the meaning of the *Hire-purchase Act 1959*) used motor vehicles, but does not include a person who—

- (i) undertakes any such function as a representative of Her Majesty; or
- (ii) is employed merely as a clerk or servant; or
- (iii) is a registered life assurance company or friendly society, or a financial institution or trustee company.

“motor salesperson” means any person in the direct employ of or acting for or by arrangement with a motor dealer who for salary, wages, commission, or other remuneration of any kind, exercises or carries on for that motor dealer any of the functions of a motor dealer, but does not include a person whose duties when employed by a motor dealer consist of no more than clerical or secretarial work or the receipt in the office of the motor dealer of money payable to that motor dealer in the course of the motor dealer’s business.

“motor vehicle” means any vehicle propelled or designed for propulsion wholly or partly by gas, motor spirit, oil, electricity, steam, or any other mechanical power, whether such vehicle is or is not for the time being capable of being operated or used in a normal manner, and includes a motor car, motor cycle, motor omnibus, motor truck, motor utility truck, motor tractor, and a caravan trailer designed to be attached to or drawn by a motor vehicle, but does not include a vehicle designed for use on a railway or tramway or a fire engine or fire reel.

“providing credit” means—

- (a) the making of loans; or
- (b) the hiring under hire-purchase agreements of motor vehicles bought or taken in exchange from or with—
 - (i) licensed motor dealers; or
 - (ii) financiers; or
 - (iii) persons not being licensed dealers or financiers in

Auctioneers and Agents Act 1971

circumstances which do not constitute the person so buying or taking motor vehicles in exchange a dealer; or

- (c) the giving of guarantees, indemnities or bonds; or
- (d) the endorsing or accepting of bills of exchange; or
- (e) the hiring where the right to purchase the motor vehicle is not included in that hiring or the sale on instalment terms.

“real estate agent” means any person who, as an agent for others, and whether on commission or for or in expectation of any fee, gain, or reward, and either alone or in connection with any other business, and either generally or in respect of any 1 transaction, exercises or carries on or advertises or notifies or states that the person exercises or carries on or that the person is willing to exercise or carry on or in any way holds the person out as ready to undertake the business of buying, selling, exchanging, or letting houses, land, or estates, or negotiating for such buying, selling, exchanging, or letting, or buying, selling, exchanging, or letting hotel businesses, residential businesses, boarding house businesses, storekeeping businesses, manufacturing businesses, or businesses of any kind, or any interest in any of such businesses, or buying, selling, or exchanging livestock but, does not include a person who—

- (a) undertakes any such function as a representative of Her Majesty; or
- (b) is employed merely as a clerk or servant; or
- (c) is a registered life assurance company or friendly society, or a financial institution or trustee company.

“real estate salesperson” means any person in the direct employ of or acting for or by arrangement with a real estate agent who for salary, wages, commission, or other remuneration of any kind, exercises or carries on for that real estate agent any of the functions of a real estate agent, but does not include a person whose duties when employed by a real estate agent consist of no more than clerical or secretarial work or the receipt in the office of the real estate agent of money payable to that real estate agent in the course of the real estate agent’s business.

“registrar” means the registrar of auctioneers and agents appointed under this Act, and includes a deputy registrar of auctioneers and agents and

any other person for the time being exercising the functions of the registrar.

“rental bond interest account” see *Residential Tenancies Act 1994*.

“sale” includes an agreement to sell.

“sale by auction” or **“to sell by auction”** implies the sale of any property whether real or personal of any kind or description by outcry, knocking down of hammer, or any other mode under which the highest or any bidder is the purchaser, or under which there is a competition for the purchase of any property in any way commonly known and understood to be by way of auction.

“secretary” means the secretary to the committee, and includes an assistant secretary and a person temporarily discharging the duties of the secretary.

“security interest certificate” means a security interest certificate under the *Motor Vehicles Securities Act 1986*.

“used motor vehicle” means a motor vehicle that has, at any time, been licensed or registered, whether under the law of this State or of any other State or a Territory or a foreign country.

Application of provisions about auctioneers and auctions

3.(1) The provisions of this Act relating to auctioneers shall not apply to—

- (a) a person selling by auction, for the State, land or other property of the State; or
- (b) any sales ordered by the sheriff under any writ or process issued out of any court; or
- (c) any sales made by or under any rule, order, or judgment of the Supreme Court or the District Court; or
- (d) any sales made by any person acting in obedience to any process issued by any court or judge or justice for the recovery of any fine, penalty, or award, or in obedience to any order of such court, judge, or justice; or
- (e) any sales made by or under the authority of the public trustee; or

- (f) any sales of any animals impounded according to law and sold under the laws relating to impounding; or
- (g) any sales of any goods distrained for rent or arrears of rent; or
- (h) any sales made by or under the authority of any local government; or
- (i) any person who, under any Act, is for the time being authorised to sell by auction without holding an auctioneer's licence; or
- (j) any sales by postal bids of stamps or coins.

(2) If—

- (a) a proposed sale by auction of chattels is advertised and the chattels are sold by the auctioneer within 1 month prior to the advertised date of the auction; or
- (b) chattels are passed in at auction and subsequently sold by the auctioneer within 1 month after the auction;

the sale of those chattels shall be deemed to be a sale by auction and this Act shall apply accordingly.

Application of provisions about real estate agents, commercial agents and motor dealers

4. The provisions of this Act relating to real estate agents, commercial agents and motor dealers shall not apply to or in relation to the public trustee or in respect of the collection of debts or rents by any solicitor or accountant, who has complied with the requirements of the *Trust Accounts Act 1973*, as to the depositing of any sum, securities, or fidelity bond prescribed by way of guarantee for the proper application by the person of trust money coming into the person's possession.

Effect of Act on certain other laws

5. This Act does not in any way affect the *Legal Practitioners Act 1995*, section 19.³

³ *Legal Practitioners Act 1995*, section 19 (Conveyancing how prohibited)

Surrender of licence not cancellation

6. For the purposes of this Act a licence which is surrendered shall not be deemed to be cancelled.

Exemptions

7. A regulation may exempt a person from this Act or a provision of this Act.

PART 2—THE COMMITTEE**Auctioneers and agents committee**

8.(1) For the purposes of this Act there shall be a committee to be known as the auctioneers and agents committee.

(2) The committee is a body corporate and shall have perpetual succession, a common seal and, subject to this Act, shall be capable of suing and being sued.

(3) All courts and persons acting judicially shall take judicial notice of the common seal of the committee and, until the contrary is proved, shall presume that it was duly affixed to any document on which it appears.

(4) The common seal shall be kept in the custody of the secretary or such other person as the committee may determine, and shall not be affixed to any document except by authority of a resolution of the committee and in the presence of at least 1 member and the secretary or such other person as the committee may appoint for the purpose.

(5) The persons in whose presence the seal is affixed shall attest by their signatures the fact and the date of the seal being so affixed.

(6) The committee shall consist of the registrar and 8 other members appointed by the Governor in Council.

(7) The Governor in Council shall appoint 1 of the members to be chairperson of the committee and 1 to be deputy chairperson of the committee.

(8) Each member, other than the registrar, shall be appointed for such term, not exceeding 3 years, as is fixed by the Governor in Council in the instrument of the member's appointment, and if not then disqualified shall be eligible for reappointment, and may be removed from office at any time by the Governor in Council, and shall be paid such fees and expenses as are approved by the Governor in Council.

(9) In the case of the suspension, illness, or absence of a member, or in the case of a vacancy in the office of a member, the Governor in Council may appoint a person to act as deputy for such member during such suspension, illness, or absence, or until such vacancy is filled, as the case may be, and such deputy may exercise the powers and perform the duties of such member accordingly.

(10) The Governor in Council may appoint a secretary and an assistant secretary to the committee and an appointee may be a member of the public service in which event the appointee may hold the appointment in addition to any other position the appointee holds in the public service.

(11) Any member of the committee may be a member of the public service and in such event the member may hold such appointment in addition to any other position the member holds in the public service.

Vacation of office

9. A member of the committee shall be deemed to have vacated the member's office if—

- (a) the member becomes bankrupt within the meaning of the law in force for the time being relating to bankruptcy, or compounds with the member's creditors; or
- (b) the member becomes a patient within the meaning of the *Mental Health Act 1974*; or
- (c) the member is absent from 3 consecutive ordinary meetings of the committee without leave granted by the Minister; or
- (d) the member dies; or
- (e) the member resigns office by writing under the member's hand lodged with the registrar; or
- (f) the member is removed from office by the Governor in Council;

or

- (g) the member, being a member of the public service, resigns or is dismissed from the public service.

Filling of vacancy

10. Any person appointed to fill a vacancy shall hold office for the residue of the term for which the person's predecessor was appointed.

Meetings

11.(1) At any meeting of the committee 5 members, 1 of whom is the chairperson or the deputy chairperson, shall form a quorum.

(2) Subject to there being a quorum, the committee may meet and transact business despite any vacancy in its membership.

(3) At any meeting of the committee the chairperson or, in the absence of the chairperson, the deputy chairperson, shall preside.

(4) The chairperson of the meeting shall have a deliberative and, in the case of equality of votes, a casting vote.

(5) The committee shall meet at such times and places as are fixed by the chairperson.

(6) Subject to this part, the committee may regulate its own proceedings.

Taking evidence

12. For the purpose of enabling the committee to conduct any investigation or inquiry or other proceeding which it deems necessary for the purposes of this Act, the committee shall have all the powers, other than those where the chairperson is a judge of the Supreme Court, of a commission of inquiry under the *Commissions of Inquiry Act 1950*, and those Acts shall apply accordingly.

Powers of committee

13.(1) The committee shall have and may exercise and perform the powers and functions conferred upon the committee by or under this Act.

(2) The committee may advise the Minister on any matter referred to it by the Minister or any matter relating to the administration of this Act.

Subcommittees

14.(1) The committee may, with the approval of the Minister, resolve that all or any of its powers and functions in respect of applications for the grant, renewal or restoration of licences or certificates of registration under this Act be exercised, performed or discharged by a subcommittee constituted under this section.

(2) A subcommittee shall consist of the chairperson or the deputy chairperson, the registrar or a deputy registrar, and 3 other members of the committee nominated by it and appointed by the Minister.

(3) At any meeting of a subcommittee a quorum shall be constituted by 3 members of the subcommittee, 1 of whom shall be the chairperson or the deputy chairperson, and 1 of whom shall be the registrar or a deputy registrar.

(4) Subject to there being a quorum, a subcommittee may meet and transact business despite any vacancy in its membership.

(5) At any meeting of a subcommittee the chairperson or, if the chairperson is not a member of the subcommittee, the deputy chairperson, shall preside and shall have a deliberative and, in the case of equality of votes, a casting vote.

(6) A subcommittee shall meet at such times and places as are fixed by the chairperson or, if the chairperson is not a member of the subcommittee, by the deputy chairperson.

(7) A subcommittee shall conduct its proceedings in accordance with the manner in which proceedings of the committee are conducted from time to time, with all necessary modifications.

(8) A subcommittee exercising, performing or discharging powers or functions delegated to it under subsection (1) shall be deemed to be the committee exercising, performing or discharging those powers or functions and this Act shall apply accordingly.

(9) The secretary or the assistant secretary shall act as secretary to a subcommittee.

(10) Unless sooner removed from office by the Minister, a member of a subcommittee, other than the registrar or a deputy registrar, shall hold office until the member ceases to hold office as a member of the committee.

Exclusion of liability

15. The members of the committee or of a subcommittee, the registrar, the secretary or any person acting under the direction of the committee or a subcommittee, shall not incur any liability on account of anything done or omitted to be done in good faith and without negligence under or for the purposes of this Act.

Registrar and officers

16.(1) The Governor in Council may appoint a registrar of auctioneers and agents, and such deputy registrars of auctioneers and agents, and such assistant registrars, inspectors and other officers as may be deemed necessary for the administration of this Act.

(2) On and after the commencement of this Act, every clerk of the court in Queensland excepting the clerk of the court, Brisbane, shall, because of office and without further or other appointment, be and be deemed to have been appointed to be an assistant registrar and an inspector.

(3) Any act, matter, or thing directed or authorised to be done or performed by the registrar under this Act may be done or performed by a deputy registrar, and every act, matter or thing so done or performed by a deputy registrar shall be valid and effectual as if done or performed by the registrar.

Appeals from committee

17.(1) Any—

- (a) person whose application for a licence, or renewal or restoration of a licence, is refused by the committee; or
- (b) licensee who feels aggrieved by a decision of the committee

Auctioneers and Agents Act 1971

- under section 26(10)⁴ imposing a condition or term in respect of the granting of a licence, or renewal or restoration of a licence; or
- (c) licensee who feels aggrieved by a decision of the committee under section 26(13) amending or revoking a term or condition of a licence; or
 - (d) person whose application for registration, or renewal or restoration of registration, is refused by the committee; or
 - (e) person who feels aggrieved by an order made by the committee under section 26(8)(e) or 33(9)(e)⁵ in respect of the payment of costs; or
 - (f) person who feels aggrieved by a decision made by the committee under part 6;⁶ or
 - (g) person who feels aggrieved by a decision made by the committee under part 8;⁷

may, within 1 month after notification to the person or licensee of the committee's decision, appeal to a District Court having jurisdiction at the place—

- (h) where the applicant carried on business, or proposes to carry on business; or
- (i) in the case where the applicant is, or proposes to be, an employee of a licensee—
 - (i) where that licensee carries on business or proposes to carry on business; or
 - (ii) in the case where that licensee is the holder of a corporation licence—where the registered office of the corporation is situated.

(2) Every appeal under subsection (1) shall be by way of rehearing and shall not be limited to the material before the committee when the

⁴ Section 26 (Grant of licence)

⁵ Section 33 (Grant of registration)

⁶ Part 6 (Disciplinary proceedings)

⁷ Part 8 (Pastoral houses)

committee considered the matter in question.

(3) The District Court shall have jurisdiction to hear and determine the appeal and shall inquire into and determine the appeal and subject to this section its decision shall be final.

(4) Any person who feels aggrieved by any decision of a District Court under this section may, within 1 month after the decision has been given, appeal to the Supreme Court on the ground of error or mistake in law but not otherwise.

(5) An appeal under this section shall be instituted by filing in the registry or other appropriate office of the court in question a notice of appeal.

PART 3—LICENCES

No person to act without a licence

18.(1) Subject to this Act, no individual shall act as or carry on the business of an auctioneer or advertise, notify, or state that the individual acts as or carries on the business of an auctioneer unless—

- (a) the individual is the holder of a general auctioneer's licence; or
- (b) the individual is the holder of a restricted auctioneer's licence, or a provisional auctioneer's licence, and is acting under the authority of that licence.

(2) A person shall not act as auctioneer on behalf of a corporation, or a partnership, that is authorised under this Act to carry on the business of an auctioneer unless the person complies with subsection (1)(a) or (b).

(3) A partnership shall not advertise, notify, or state—

- (a) that it acts as, or is willing to act as, an auctioneer; or
- (b) that it carries on or is willing to carry on the business of an auctioneer;

unless a member of the partnership is the holder of a general auctioneer's licence or a restricted auctioneer's licence appropriate to the business of the partnership.

(4) Subject to this Act, no person (either alone or as a member of a partnership)—

- (a) shall act as a real estate agent unless the person is the holder of a real estate agent's licence; or
- (b) shall act as a commercial agent unless the person is the holder of a commercial agent's licence; or
- (c) shall act as a motor dealer unless the person is the holder of a motor dealer's licence.

Corporation licence

19.(1) In this section—

“director” means a person validly appointed to occupy or duly authorised to act in the position of director of a corporation.

“licence” means a general auctioneer's licence, a restricted auctioneer's licence, a real estate agent's licence, a commercial agent's licence or a motor dealer's licence.

“relevant business” means the business of an auctioneer, a real estate agent, a commercial agent or a motor dealer.

(2) A corporation shall not—

- (a) act as or advertise, notify or state that it acts as, or is willing to act as, an auctioneer, a real estate agent, a commercial agent or a motor dealer; or
- (b) carry on or advertise, notify or state that it carries on, or is willing to carry on, a relevant business;

unless it is the holder of a licence (a **“corporation licence”**) appropriately endorsed under section 24(4)(b).⁸

(3) A corporation licence, or the renewal or restoration of a corporation licence, may be granted to a corporation only if the following circumstances apply—

- (a) the corporation is—

⁸ Section 24 (Classes of licences)

Auctioneers and Agents Act 1971

- (i) a company within the meaning of the Corporations Law; or
 - (ii) a recognised company within the meaning of the Corporations Law;
- (b) a director of the corporation is resident in this State and, where the corporation carries on or applies for a licence to carry on—
 - (i) only 1 relevant business, that director is the holder of a licence appropriate to that relevant business; or
 - (ii) more than 1 relevant business, that director is the holder of each licence appropriate to each of those relevant businesses;
- (c) where the corporation carries on or applies for a licence to carry on—
 - (i) business as a real estate agent, commercial agent or motor dealer, each working director (if any) is the holder of a licence appropriate to that business; or
 - (ii) more than 1 of the businesses referred to in subparagraph (i), each working director (if any) is the holder of each licence appropriate to each of those businesses;
- (d) where the corporation carries on or applies for a licence to carry on—
 - (i) business as a real estate agent, commercial agent or motor dealer, the person in charge of the sole or principal place of business is a working director or, if there is no working director, a person who is the holder of a licence appropriate to the business of the corporation; or
 - (ii) more than 1 of the businesses referred to in subparagraph (i), the person in charge of each class of business at the sole or principal place of business is a working director or, if there is no working director, a person who is the holder of a licence appropriate to that class of business;
- (e) the corporation is a fit and proper person to hold a corporation licence and its executive officers are fit and proper persons to be executive officers of a corporation that holds a corporation licence;

Auctioneers and Agents Act 1971

- (f) the corporation and its executive officers are—
 - (i) of good fame and character; and
 - (ii) not disqualified from holding a corporation licence, licence or certificate of registration;
- (g) the corporation's executive officers are not disqualified under an order made under part 6⁹ from being executive officers of a corporation that holds a corporation licence;
- (h) the corporation complies with all other requirements of this Act about obtaining a corporation licence or the renewal or restoration of a corporation licence.

(4) For the purposes of this section and section 22—¹⁰

“working director” means a director, resident in Queensland or within 65 km of the boundary of Queensland, who is required to devote substantially the whole of the director's time to the service of the corporation—

- (a) in a managerial capacity substantially related to the relevant business of the corporation or, if the corporation carries on more than 1 relevant business, to 1 or more of those relevant businesses; or
- (b) in all or any of the capacities of an auctioneer, a real estate agent, a commercial agent or a motor dealer.

(5) A working director or, if there is no working director—

- (a) a person who is in charge of the sole or principal place of business of a corporation carrying on a relevant business; or
- (b) where a corporation carries on more than 1 class of relevant business—each person who is in charge of each relevant business at the sole or principal place of business of the corporation;

shall be deemed to be authorised by the corporation to speak on its behalf and to bind it in respect of matters relating to, or inquiries being carried out

⁹ Part 6 (Disciplinary proceedings)

¹⁰ Section 22 (Each separate place of business to be in the charge of licensee or licensed manager)

under, this Act concerning that relevant business of the corporation or, in a case referred to in paragraph (b), that class of relevant business of the corporation of which the person is in charge.

(6) A corporation that is the holder of a corporation licence shall notify the registrar in writing in the approved form of the name and address of any person (whether or not the person is a director) who becomes or ceases to be—

- (a) an executive officer of the corporation; or
- (b) in charge of the sole or principal place of business of the corporation; or
- (c) in charge of a class of relevant business (where the corporation carries on more than 1 class of relevant business) at the sole or principal place of business of the corporation;

within 14 days after the person becomes or ceases to be an executive officer or, as the case may be, in charge.

(7) A director of a corporation that carries on business as a real estate agent, commercial agent or motor dealer shall not carry out any of the functions of a real estate agent or, as the case may be, a commercial agent or motor dealer in respect of that business unless the director is the holder of a licence appropriate to that business.

Person deemed to act as licensee

20. Without limiting the application of section 18 or 19(2),¹¹ any person who—

- (a) has any words painted or written, or allows to remain unobliterated any words that have been painted or written, over or about the person's premises, whether the person's private residence or business premises, that are likely to lead to the belief or supposition that the person is the holder of any licence referred to in those sections; or
- (b) places or causes to be placed any placard, board, sign, writing, or thing in the public view, wherever it may be so placed, that is

¹¹ Section 18 (No person to act without a licence) or 19 (Corporation licence)

likely to lead to the belief or supposition that the person is the holder of any licence referred to in those sections;

shall be deemed to be acting as an auctioneer or, as the case may be, a real estate agent, a commercial agent or a motor dealer.

Licensee to be in charge of principal place of business

21.(1) A licensed individual who carries on business as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, on the individual's own behalf shall be in charge of the individual's sole or principal place of business.

(2) If a partnership carries on business as—

- (a) a real estate agent, commercial agent, or motor dealer—a member of the partnership shall be in charge of its sole or principal place of business; or
- (b) an auctioneer—a member of the partnership, who is the holder of a general auctioneer's licence or a restricted auctioneer's licence of the kind appropriate to the business of the partnership, shall be in charge of its sole or principal place of business.

Each separate place of business to be in the charge of licensee or licensed manager

22.(1) No person shall, merely because of being the holder of a real estate agent's licence, or commercial agent's licence, or motor dealer's licence, keep more than 1 place for the conduct of business as a real estate agent, or commercial agent, or motor dealer, as the case may be.

(2) If a licensed individual on the individual's own behalf, or a partnership, carries on—

- (a) business as a real estate agent, commercial agent or motor dealer, at more than 1 place of business—the person in charge of each place of business, other than the principal place of business, shall be the holder of a licence, or a manager's licence, appropriate to that business; or
- (b) more than 1 of the businesses referred to in paragraph (a) at more than 1 place of business—the person in charge of each class of

Auctioneers and Agents Act 1971

business carried on at each place of business, other than the principal place of business, shall be the holder of a licence, or a manager's licence, appropriate to the class of business of which the person is in charge.

(3) If a corporation, being the holder of a corporation licence appropriately endorsed under section 24(4)(b),¹² carries on—

- (a) business as a real estate agent, commercial agent or motor dealer, at more than 1 place of business—the person in charge of each place of business, other than the principal place of business, shall be a working director or the holder of a licence, or a manager's licence, appropriate to that business; or
- (b) more than 1 of the businesses referred to in paragraph (a) at more than 1 place of business—the person in charge of each class of business carried on at each place of business, other than the principal place of business, shall be a working director or the holder of a licence, or a manager's licence, appropriate to that class of business.

(4) A person who is in charge of—

- (a) a place of business as mentioned in subsection (2)(a) or (3)(a); or
- (b) a class of business carried on at a place of business as mentioned in subsection (2)(b) or (3)(b);

shall be deemed to be authorised by the person's principal to speak on behalf of, and to bind, the principal in respect of matters relating to, or inquiries being carried out under, this Act concerning the business carried on at that place of business or, as the case may be, the class of business of which the person is in charge at that place of business.

(5) A licensee shall notify the registrar in writing in the approved form of the name and address of any person in charge of, or who ceases to be in charge of—

- (a) a place of business as mentioned in subsection (2)(a) or (3)(a); or
- (b) a class of business carried on at a place of business as mentioned in subsection (2)(b) or (3)(b);

¹² Section 24 (Classes of licences)

within 14 days after the person takes charge or ceases to be in charge.

(6) No person shall, in pursuance of this section, be in charge at more than 1 place of business.

(7) A manager's licence, or the renewal or restoration of a manager's licence, of whatever class shall not be granted to a person who—

- (a) is not resident in Queensland or within 65 km of the boundary of Queensland; or
- (b) is not 21 years of age; or
- (c) is not a person of good fame and character; or
- (e) is not a fit and proper person to hold such a licence.

(8) Despite subsection (7), a manager's licence shall not be granted to a person who has not—

- (a) completed, to the satisfaction of the committee, such written examination as is set by the committee unless exempted from such examination by the Minister on the recommendation of the committee; and
- (b) complied with such educational or other qualifications as are prescribed unless exempted by the committee from such qualifications.

Franchising agreement

23.(1) In this section—

“franchising agreement” means an agreement (whether written or not) under which a licensee, who is entitled to carry on business as a licensee under any name, title or description, authorises another person (who is the holder of a licence appropriate to the same class of business) to carry on business under—

- (a) that name, title or description; or
- (b) a name, title or description, implying or capable of being construed as implying that the business of that other person is being carried on by the licensee authorising the use of the name, title or description;

in return for receiving a share in the profits of the business of that other person or for any other consideration.

(2) A licensee shall not carry on business under a franchising agreement unless the licensee has given notice to the registrar in the approved form of the licensee's intention to do so.

Classes of licences

24.(1) A licence under this Act (other than a corporation licence) shall be 1 of the following classes, namely—

- (a) an auctioneer's licence;
- (b) a real estate agent's licence;
- (c) a commercial agent's licence;
- (d) a motor dealer's licence;
- (e) a manager's licence.

(2) An auctioneer's licence shall be—

- (a) a general auctioneer's licence; or
- (b) a provisional auctioneer's licence; or
- (c) a restricted auctioneer's licence.

(3) A manager's licence shall be—

- (a) a manager's (real estate agency) licence; or
- (b) a manager's (commercial agency) licence; or
- (c) a manager's (motor dealing) licence.

(4) A licence shall be in the approved form, and shall—

- (a) in the case of an auctioneer's licence, a real estate agent's licence, a commercial agent's licence or a motor dealer's licence, set out—
 - (i) the name of the licensee; and
 - (ii) the address of the licensee's principal place of business; or
- (b) in the case of a corporation licence, set out—

- (i) the name of the corporation; and
 - (ii) the address of its principal place of business;
- and be endorsed to show the class or classes of business that the corporation is authorised to carry on under section 19;¹³ or
- (c) in the case of a manager's licence, set out—
 - (i) the name of the manager; and
 - (ii) the address of the place of business at which the manager is in charge; and
 - (iii) if the business at the place is conducted for or on behalf of—
 - (A) an individual licensee—the licensee's name and the address of the licensee's principal place of business; or
 - (B) a corporation—the name of the corporation and the address of its principal place of business.

Application for licence

25.(1) Application for a licence or for the renewal or restoration of a licence shall be made in the approved form and shall—

- (a) specify the class of licence desired by the applicant; and
- (b) be lodged with the registrar; and
- (c) be accompanied by the prescribed fee and, where applicable, the contribution to the fund prescribed in respect of the licence in question.

(2) Upon receipt of an application for a licence the registrar shall inquire into and report to the committee upon—

- (a) where the applicant is an individual—the fame and character and qualifications of the applicant for the licence in question; or
- (b) where the applicant is a corporation—the fame and character of any executive officer of the corporation and the qualifications of the corporation for the licence in question.

¹³ Section 19 (Corporation licence)

(3) Where an application is made for renewal or restoration of a licence, the registrar may, if the registrar thinks fit, make, in respect of the applicant, further inquiries concerning the matters referred to in subsection (2)(a) or, if the applicant is a corporation, subsection (2)(b) and shall, whether or not the registrar makes any such inquiries, if satisfied that the applicant is not precluded because of any provision of this Act from being granted renewal or restoration, so certify to the committee.

(4) If the registrar is not so satisfied, the registrar shall so certify to the committee and report to the committee the registrar's reasons for not being satisfied.

(5) The registrar may, to assist the registrar in carrying out any inquiries under subsection (2) or (3), obtain—

- (a) a report from the commissioner of the police service in respect of the applicant and, if the applicant is a corporation, in respect of any executive officer of the corporation; or
- (b) if an applicant, or an executive officer of a corporation that is an applicant, holds or previously held a licence or certificate of registration (or similar accreditation) in respect of the business of an auctioneer, a real estate agent, a motor dealer or a commercial agent in another State—a report from the appropriate licensing authority in that State.

Grant of licence

26.(1) The committee may, in its discretion, grant or refuse to grant an application for a licence or for the renewal of a licence.

(2) Where the committee grants an application for a licence or for the renewal of a licence, the registrar shall issue the licence, or the renewal of the licence, under the registrar's hand.

(3) A licence—

- (a) shall remain in force for a period of 12 months from and including the date on which it is issued unless renewed under this section; and
- (b) if renewed, shall, in respect of each renewal, remain in force for a period of 12 months from and including the date on which it

would, but for renewal, expire;

unless—

- (c) the committee grants the licence or the renewal of the licence for a shorter period; or
- (d) the licence is sooner cancelled, suspended or surrendered; or
- (e) the licence is deemed to continue in force under subsection (5) or section 27(4).

(4) An application for the renewal of a licence shall be lodged with the registrar prior to the date on which the licence would, but for the renewal, expire.

(5) If an application is made for the renewal of a licence under subsection (4) and the committee does not determine the application before the date on which the licence would, but for renewal, expire, the licence shall be deemed to continue in force from that date until such time as the committee grants or refuses the application.

(6) If the committee grants an application for the renewal of a licence after the date on which it would, but for subsection (5), have expired, the licence shall be deemed to be renewed on and from that date.

(7) A licensee may surrender the licensee's licence by giving written notice in the approved form to the registrar and delivering the licence to the registrar who shall endorse on it the word 'surrendered' and note the register of licences, kept by the registrar under section 30,¹⁴ accordingly.

(8) Any person, with the prior approval of the Minister, may object to the grant of a licence or the renewal of a licence, and in such event—

- (a) the registrar shall notify the applicant that the grant of the application will be objected to, and shall set out shortly in the notice the nature of the objection proposed to be made; and
- (b) the hearing of the application shall not take place until after the expiration of 7 days after the lodging of the notice of objection; and
- (c) the hearing of the application shall be an open hearing and the

¹⁴ Section 30 (Register)

Auctioneers and Agents Act 1971

applicant and the objector shall each be entitled to appear at the hearing personally or by counsel or solicitor; and

- (d) at the hearing a barrister, solicitor, or other person appointed by the committee, may appear to examine or cross-examine witnesses or to otherwise assist the committee; and
- (e) the committee may make such order in respect of the costs of the hearing as it thinks fit and any costs so ordered shall be a debt due and owing to the person in whose favour the order is made and recoverable by the person in any court of competent jurisdiction.

(9) A licence or a renewal of a licence shall not be granted to an individual who is disqualified from holding a licence or a certificate of registration.

(10) In granting any licence or renewal of a licence the committee—

- (a) may grant the licence, or renewal, without terms and conditions; or
- (b) may grant the licence, or renewal, upon and subject to such terms and conditions as it deems fit.

(11) Where a licence is granted or renewed subject to terms and conditions any renewal, or further renewal, shall, unless the committee directs otherwise, be deemed to be granted under and subject to those terms and conditions.

(12) Terms and conditions imposable by the committee under this section may be imposed by it at its discretion and differently in respect of different licences or licensees.

(13) The committee may at any time amend or revoke the terms and conditions of a licence or any of them.

(14) If the committee refuses an application for a licence or for renewal of a licence, the secretary shall give the applicant written notice of—

- (a) the decision of the committee; and
- (b) the provision of this Act, and the ground contained in the provision, under which the application has been refused.

Restoration of licence

27.(1) Where an application for renewal of a licence is not made before the date of expiry of the licence, the person who held the licence may, within 3 months after the date of expiry, apply for the restoration of the licence.

(2) An application for restoration of a licence shall be delivered to the registrar.

(3) Upon an application for restoration of a licence being made the like fees and contributions as are payable on the renewal of the licence shall be paid together with such additional fee (if any) as is prescribed in respect of an application for restoration of a licence.

(4) Upon an application for restoration of a licence being made under this section, the licence shall be deemed to have continued in force from the date on which it would, but for this subsection, have expired and shall be deemed to continue in force until such time as the committee grants or refuses the application.

(5) If the committee grants an application for restoration of a licence, the licence shall be deemed to be renewed from and including the date on which it would, but for subsection (4), have expired.

(6) Section 26, shall, so far as it is applicable and with all necessary adaptations and modifications, apply to and in respect of an application for the restoration of a licence under this section in all respects as if the same were an application for a licence or a renewal of a licence.

Fees for licences

28.(1) A regulation may prescribe the fees that shall be payable in respect of any of the following matters—

- (a) for an auctioneer's licence—
 - (i) being a general auctioneer's licence; or
 - (ii) being a provisional auctioneer's licence; or
 - (iii) being a restricted auctioneer's licence;
- (b) for a real estate agent's licence;
- (c) for a commercial agent's licence;

Auctioneers and Agents Act 1971

- (d) for a motor dealer's licence;
- (e) for a manager's licence—
 - (i) being a manager's (real estate agency) licence; or
 - (ii) being a manager's (commercial agency) licence; or
 - (iii) being a manager's (motor dealing) licence;
- (f) for an auctioneer's licence and any 1 or more of the following licences—
 - (i) a real estate agent's licence;
 - (ii) a commercial agent's licence;
 - (iii) a motor dealer's licence;
- (g) for a corporation licence;
- (h) for a duplicate licence;
- (i) for the renewal of any licence or licences.

(2) The fees referred to in subsection (1) shall be paid at the time and in the manner prescribed and where such are not prescribed shall accompany the application for a licence in respect of which the fees are payable.

(3) Upon the refusal or withdrawal of an application for a licence there shall be refunded to the applicant, or to any person who appears to the registrar to be entitled to the refund, the prescribed fees and the prescribed contribution to the fund paid by the applicant in respect of the application.

(4) Upon the refusal or withdrawal of an application for the renewal or restoration of a licence there shall be refunded to the applicant, or to any person who appears to the registrar to be entitled to the refund—

- (a) the prescribed fees for renewal of a licence paid by the applicant reduced by an amount equal to one-twelfth of the prescribed fees; and
- (b) the prescribed contribution to the fund reduced by an amount equal to one-twelfth of the contribution;

for each whole month during which the applicant's licence was deemed to

continue in force under section 26(5)¹⁵ or, in the case of an application for restoration, section 27(4).¹⁶

(5) Nothing in subsection (4) requires a refund to be made—

- (a) in any case where the applicant applied for the renewal of licences for 2 or more classes of business and the renewal of at least 1 licence is granted; or
- (b) of any additional fee prescribed under section 27(3) in respect of an application for restoration of a licence.

(6) If the committee grants a licence or the renewal or restoration of a licence for a period of less than 12 months, there shall be refunded to the licensee, or to any person who appears to the registrar to be entitled to the refund—

- (a) the prescribed fees for an application for a licence or, as the case may be, the renewal or restoration of a licence reduced by an amount equal to one-twelfth of the prescribed fees; and
- (b) the prescribed contribution to the fund reduced by an amount equal to one-twelfth of the contribution;

for each whole month for which the licensee was granted the licence or, as the case may be, the renewal or restoration of the licence.

Cancellation of licences generally

29.(1) If a licensee is convicted of an indictable offence that exhibits fraud or dishonesty on the offender's part or is against sexual morality or constitutes an assault or exhibits violence against the person on the offender's part, the licence of the convicted person shall be deemed to be ipso facto cancelled.

(2) For subsection (1), a person is taken to have been convicted of an indictable offence if the person is summarily convicted of an indictable offence.

(3) Subsection (2) applies—

¹⁵ Section 26 (Grant of licence)

¹⁶ Section 27 (Restoration of licence)

Auctioneers and Agents Act 1971

- (a) whether or not a conviction is recorded; and
- (b) despite any other Act or law.

(4) If any licensee is convicted of an offence against this Act, the court may, if it thinks fit, in addition to any other penalty or punishment, cancel the licence of the convicted person and may further order that the convicted person be disqualified either permanently or for such period as the court may order from holding any licence or licences under this Act.

(5) Where any court is of opinion that any person who has been charged before that court with any offence, or who is a party to any proceeding before that court, is not a fit and proper person to hold a licence under this Act, the court may, in addition to any other order, cancel the licence and may further order that the person be disqualified either permanently or for such period as the court may order from holding any licence or licences under this Act.

(6) Where the court under subsection (4) cancels a licence or, upon application for such cancellation, refuses to cancel a licence, an appeal shall lie in all respects and in the same manner as if an order of cancellation of a licence were an imposition of a penalty or punishment.

(7) Subject to subsection (8), where a licence has been cancelled under part 6, or under this section, a person shall not—

- (a) carry on business as such or advertise or in any manner hold out that the person carries on business as such—
 - (i) under the name, or a name nearly resembling the name, under which a person whose licence has been cancelled was carrying on business as a licensee when the person's licence was cancelled; or
 - (ii) under a name implying or capable of being construed as implying that the person is the successor in business, or in any way interested or concerned in continuing the business as a licensee, of a person whose licence has been cancelled; or
- (b) in connection with the person's business or the name of the person's business as such, use any word or words associating the person or the person's business as a licensee in any way with a person or the business of a person whose licence has been

cancelled.

(8) Subsection (7) shall not apply in respect of the carrying on by a licensee of the licensee's business as such under the licensee's true name without any addition or adaptation and in particular without any words of association as specified in that subsection.

(9) Where a court, under this section, cancels a licence, the registrar or clerk of such court shall advise the registrar of auctioneers and agents within 7 days of the making of the cancellation.

Register

30.(1) The registrar shall keep a register of all licences and of all renewals, restorations, suspensions and cancellations of licences, and of all refusals of applications and of all disqualifications, which register shall be available at the office of the registrar during normal working hours for perusal by any person upon payment of the prescribed fee.

(2) A certificate purporting to be signed by the registrar stating that a person was or was not on any date, or during any period, the holder of a licence shall be evidence and, in the absence of evidence to the contrary, conclusive evidence in all proceedings of the matters stated in the certificate.

PART 4—REGISTRATION OF SALESPERSONS ETC.

Certain employees to be registered

31.(1) No person shall act as, or notify that the person is available for employment as, a real estate salesperson unless the person is the holder of a certificate of registration under this part as a real estate salesperson.

(2) No real estate agent shall employ or continue to employ as a real estate salesperson any person who is not the holder of a certificate of registration under this part as a real estate salesperson, endorsed in relation to that real estate agent.

(3) No person shall act as, or notify that the person is available for employment as, a commercial subagent unless the person is the holder of a

certificate of registration under this part as a commercial subagent.

(4) No commercial agent shall employ or continue to employ as a commercial subagent any person who is not the holder of a certificate of registration under this part as a commercial subagent, endorsed in relation to that commercial agent.

(5) No person shall act as, or notify that the person is available for employment as, a motor salesperson unless the person is the holder of a certificate of registration under this part as a motor salesperson.

(6) No motor dealer shall employ or continue to employ as a motor salesperson any person who is not the holder of a certificate of registration under this part as a motor salesperson, endorsed in relation to that motor dealer.

(7) No corporation that is the holder of a corporation licence shall employ or continue to employ as a real estate salesperson, commercial subagent, or motor salesperson any person who is not the holder of a certificate of registration under this part as a real estate salesperson, commercial subagent, or motor salesperson, as the case may be, endorsed in relation to that corporation.

(8) Nothing in this section prevents—

- (a) a person who is the holder of a licence as a real estate agent, commercial agent or motor dealer or a manager's licence in respect of any such business from acting as, or notifying that the person is available for employment as a real estate salesperson or, as the case may be, a commercial subagent or a motor salesperson; or
- (b) a licensee from employing a person, who is the holder of a licence or a manager's licence, referred to in paragraph (a), as a real estate salesperson or, as the case may be, a commercial subagent or a motor salesperson.

(9) A person referred to in subsection (8) who obtains employment as a real estate salesperson, commercial subagent or motor salesperson shall immediately notify the registrar of the address of the person's place of employment and the name of the person's employer and shall not, in the case of a person so employed who is the holder of a licence as a real estate agent, commercial agent or motor dealer—

- (a) carry on the business appropriate to the person's licence on the person's own behalf; or
- (b) act as an executive officer of a corporation that carries on a business of the same class as that in respect of which the person is licensed;

unless the person has obtained the approval of the committee to do so.

Application for registration

32.(1) An application for registration as a real estate salesperson, commercial subagent, or motor salesperson, or for the renewal or restoration of such a registration, shall be made in the approved form and shall—

- (a) specify the class of registration desired by the applicant; and
- (b) be lodged with the registrar; and
- (c) be accompanied by—
 - (i) a notification by a real estate agent, commercial agent, or motor dealer that the agent or dealer intends to employ or to continue to employ the applicant as a real estate salesperson, commercial subagent, or motor salesperson, as the case may be; and
 - (ii) the prescribed fee.

(2) Upon receipt of the application the registrar shall inquire into and report to the committee upon the fame and character and qualifications of the applicant.

(3) Where an application is made for renewal or restoration of registration as a real estate salesperson, commercial subagent or motor salesperson, the registrar may, if the registrar thinks fit, make, in respect of the applicant, further inquiries concerning the matters referred to in subsection (2) and shall, whether or not the registrar makes any such inquiries, if satisfied that the applicant is not precluded because of any provision of this Act from being granted renewal or restoration, so certify to the committee.

(4) If the registrar is not so satisfied, the registrar shall so certify to the

committee and report to the committee the reasons for not being satisfied.

(5) The registrar may, to assist the registrar in carrying out any inquiries under subsection (2) or (3), obtain—

- (a) a report from the commissioner of the police service in respect of the applicant; and
- (b) if the applicant holds or previously held a licence or certificate of registration (or similar accreditation) in respect of the business of an auctioneer, a real estate agent, a motor dealer or a commercial agent in another State—a report from the appropriate licensing authority in that State.

Grant of registration

33.(1) The committee may, in its discretion, grant or refuse to grant an application for registration or for the renewal of registration as a real estate salesperson, commercial subagent, or motor salesperson.

(2) Where the committee grants an application for registration or for renewal under this section, the registrar shall issue a certificate of registration or renewal under the registrar's hand.

(3) A certificate of registration shall set out the name and residential address of the holder of the certificate.

(4) A certificate of registration—

- (a) shall remain in force for a period of 12 months from and including the date on which it is issued unless renewed under this section; and
- (b) if renewed, shall, in respect of each renewal, remain in force for a period of 12 months from and including the date on which it would, but for the renewal, expire;

unless—

- (c) the committee grants the certificate or the renewal of the certificate for a shorter period; or
- (d) the certificate is sooner cancelled, suspended or surrendered; or
- (e) the certificate is deemed to continue in force under subsection (6) or section 34(3).

(5) An application for the renewal of a certificate of registration shall be lodged with the registrar prior to the date on which the certificate would, but for the renewal, expire.

(6) If an application is made for the renewal of a certificate of registration under subsection (5) and the committee does not determine the application before the date on which the certificate would, but for renewal, expire, the certificate shall be deemed to continue in force from that date until such time as the committee grants or refuses the application.

(7) If the committee grants an application for the renewal of a certificate of registration after the date on which it would, but for subsection (6), have expired, the licence shall be deemed to be renewed on and from that date.

(8) A holder of a certificate of registration may surrender the certificate by giving written notice in the approved form to the registrar and delivering the certificate to the registrar who shall endorse on it the word 'surrendered' and note the record of registrations, kept by the registrar under section 37,¹⁷ accordingly.

(9) Any person, with the prior approval of the Minister, may object to the registration or renewal of registration of a real estate salesperson, commercial subagent, or motor salesperson, and in such event—

- (a) the registrar shall notify the applicant that the grant of the application will be objected to, and shall set out shortly in the notice the nature of the objections proposed to be made; and
- (b) the hearing of the application shall not take place until after the expiration of 7 days after the lodging of the notice of objection; and
- (c) the hearing of the application shall be an open hearing and the applicant and the objector shall each be entitled to appear at the hearing personally or by counsel or solicitor; and
- (d) at the hearing a barrister, solicitor, or other person appointed by the committee, may appear to examine or cross-examine witnesses or to otherwise assist the committee; and
- (e) the committee may make such order in respect of the costs of the hearing as it thinks fit and any costs so ordered shall be a debt due

¹⁷ Section 37 (Record of registration)

to the person in whose favour the order is made and recoverable by the person in any court of competent jurisdiction.

(10) A certificate of registration or of renewal of registration as a real estate salesperson, commercial subagent, or motor salesperson shall not be granted—

- (a) to a person who is not resident in Queensland or within 65 km of the boundary of Queensland; or
- (b) to a corporation; or
- (c) to a person who is disqualified from holding a certificate of registration under this Act; or
- (d) to a person who is not of good fame and character or is not otherwise a fit and proper person to be so registered.

(11) Despite subsection (10), a certificate of registration shall not be granted to a person who has not—

- (a) completed, to the satisfaction of the committee, such written examination as is set by the committee unless exempted from such examination by the Minister on the recommendation of the committee; and
- (b) complied with such educational or other qualifications (if any) as are prescribed unless exempted by the committee from such qualifications.

(12) If the committee refuses an application for registration or for renewal of registration, the secretary shall give the applicant written notice of—

- (a) the decision of the committee; and
- (b) the ground, contained in subsection (10), on which the application has been refused.

Restoration of certificate

34.(1) Where an application for renewal of a certificate of registration is not made before the date of expiry of the certificate, the person who held the certificate may, within 3 months after the date of expiry, apply for the restoration of the certificate by delivering an application in the approved

form to the registrar.

(2) Upon an application for restoration of a certificate of registration being made, the like fees as are payable on the renewal of the certificate shall be paid together with such additional fee (if any) as is prescribed in respect of an application for restoration of a certificate.

(3) Upon an application for restoration of a certificate of registration being made under this section, the certificate shall be deemed to have continued in force from the date on which it would, but for this subsection, have expired and shall be deemed to continue in force until such time as the committee grants or refuses the application.

(4) If the committee grants an application for restoration of a certificate of registration, the certificate shall be deemed to be renewed from and including the date on which it would, but for subsection (3), have expired.

(5) Section 33, shall, so far as it is applicable and with all necessary adaptations and modifications, apply to and in respect of an application for the restoration of a certificate of registration under this section in all respects as if the same were an application for a certificate or a renewal of a certificate.

Fees

35.(1) A regulation may prescribe the fees that shall be payable in respect of any of the following matters—

- (a) for registration as a real estate salesperson;
- (b) for registration as a commercial subagent;
- (c) for registration as a motor salesperson;
- (f) for a duplicate certificate of registration;
- (g) for the renewal of a certificate of registration.

(2) The fees referred to in subsection (1) shall be paid at the time and in the manner prescribed and where such are not prescribed shall accompany the application or notification in respect of which the fees are payable.

(3) Upon the refusal or withdrawal of an application for a certificate of registration, there shall be refunded to the applicant, or to any person who appears to the registrar to be entitled to the refund, the prescribed fees paid

by the applicant when lodging the application.

(4) Upon the refusal or withdrawal of an application for the renewal or restoration of a certificate of registration, there shall be refunded to the applicant, or to any person who appears to the registrar to be entitled to the refund, the prescribed fees for renewal of a certificate paid by the applicant reduced by an amount equal to one-twelfth of the prescribed fees for each whole month during which the applicant's certificate was deemed to continue in force under section 33(6)¹⁸ or, in the case of an application for restoration, section 34(3).¹⁹

(5) If the committee grants a certificate of registration or the renewal or restoration of a certificate for a period of less than 12 months, there shall be refunded to the holder of the certificate, or to any person who appears to the registrar to be entitled to the refund, the prescribed fees for an application for a certificate or, as the case may be, the renewal of a certificate reduced by an amount equal to one-twelfth of the prescribed fees for each whole month for which the holder was granted the certificate or, as the case may be, the renewal or restoration of the certificate.

(6) Nothing in subsection (4) or (5) requires a refund to be made of any additional fee prescribed in respect of an application for restoration of a certificate.

Cancellation of registration generally

36.(1) If the holder of a certificate of registration is convicted of an indictable offence (whether by jury or summarily) that exhibits fraud or dishonesty on the offender's part or that constitutes an assault, whether sexual or not, the certificate of the convicted person shall ipso facto be deemed to be cancelled.

(2) If the holder of a certificate of registration is convicted of an offence against this Act, the court may, if it thinks fit, in addition to any other penalty or punishment, cancel the certificate of the convicted person and may further order that the convicted person be disqualified either permanently or for such period as the court may order from holding a

¹⁸ Section 33 (Grant of registration)

¹⁹ Section 34 (Restoration of certificate)

certificate of registration under this Act.

(3) Where any court is of opinion that any person (being the holder of a certificate of registration) who has been charged before that court with any offence, or who is a party to any proceeding before that court, is not a fit and proper person to hold a certificate of registration, the court may, in addition to any other order, cancel the certificate and may further order that the person be disqualified either permanently or for such period as the court may order from holding a certificate of registration under this Act.

(4) Where the court under subsection (2) cancels a certificate of registration or, upon application for cancellation, refuses to cancel a certificate of registration an appeal shall lie in all respects and in the same manner as if an order of cancellation of a certificate were an imposition of a penalty or punishment.

(5) Where a certificate of registration held by a person is cancelled under this section, or under part 6, the person shall not, from the time of cancellation, act as, or notify that the person is available for employment as, a real estate salesperson, commercial subagent or motor salesperson.

(6) Where a court, under this section, cancels a certificate of registration, the registrar or clerk of the court shall advise the registrar of auctioneers and agents of the order of cancellation within 7 days after the making of the order.

Record of registration

37.(1) The registrar shall keep a record of the registration of all registered real estate salespersons, commercial subagents and motor salespersons, and of all renewals, restorations, suspensions and cancellations of such registrations and of all refusals of applications and of all disqualifications, which record shall be available at the office of the registrar during normal working hours for perusal by any person upon payment of the prescribed fee.

(2) A certificate purporting to be signed by the registrar stating that a person was or was not on any date, or during any period, the holder of a certificate of registration shall be evidence and, in the absence of evidence to the contrary, conclusive evidence in all proceedings of the matters stated in the certificate.

Restriction on employment of certain other persons

38.(1) A licensee shall not, except with the approval of the committee, and subject to such conditions (if any) as the committee may impose, employ or continue to employ in any way in connection with the licensee's business as a licensee any person who, in Queensland or in another State has, to the knowledge of the licensee, been refused a licence or certificate of registration of any kind under, or similar to a licence or certificate of registration of any kind under this Act, or who has had such a licence or certificate of registration cancelled, or who has been permanently or temporarily disqualified from holding such a licence or certificate of registration, or who has been convicted of an indictable offence or of an offence that, had it occurred in Queensland, would have been an indictable offence, and no such person shall, except with the approval of the committee under this section, and subject to such conditions (if any) as the committee may impose, participate or be in any way concerned in the business of a licensee.

(2) On an application by a licensee for an approval of the committee under this section, the committee may, in its discretion, grant or refuse to grant such approval and, if it grants such approval, may impose such conditions with respect to such employment, participation, or concern as it sees fit and as are specified in the approval and may, at any time, revoke the approval or amend or revoke such conditions or impose further conditions.

(3) A licensee and a person in respect of whom an approval has been granted under this section subject to conditions shall in every respect comply with the conditions imposed by the committee.

(4) For the purposes of this section—

- (a)** a refusal of an application for renewal or restoration of a licence or certificate of registration shall be deemed to be a refusal of a licence or, as the case may be, a certificate of registration; and
- (b)** despite any Act or law to the contrary, where a person has been summarily convicted of an indictable offence or of an offence that, had it occurred in Queensland, would have been an indictable offence, the person shall be deemed to have been convicted of an indictable offence.

(5) A certificate purporting to be signed by the secretary stating that the committee, under this section—

- (a) has granted its approval and the conditions (if any) imposed in respect of granting its approval; or
- (b) has refused to grant its approval;

shall be evidence and, in the absence of evidence to the contrary, conclusive evidence in all proceedings of the matters stated in the certificate.

PART 5—AUCTIONEERS, REAL ESTATE AGENTS, COMMERCIAL AGENTS AND MOTOR DEALERS

Division 1—Auctioneers

General auctioneers' licences

39.(1) A general auctioneer's licence, or the renewal or restoration of a general auctioneer's licence, shall not be granted to an applicant who—

- (a) is not resident in Queensland or within 65 km of the boundary of Queensland; or
- (b) is not 21 years of age; or
- (c) is not a person of good fame and character; or
- (d) does not have business premises complying with the prescribed requirements (if any) unless exempted from this requirement by the Minister; or
- (e) is not a fit and proper person to hold such a licence.

(2) Despite subsection (1), a general auctioneer's licence shall not be granted to a person who has not—

- (a) completed, to the satisfaction of the committee, such written examination as is set by the committee unless exempted from such examination by the Minister on the recommendation of the committee; and
- (b) complied with such educational or other qualifications as are

prescribed unless exempted by the committee from such qualifications.

Provisional auctioneers' licences

40.(1) Subject to this Act, a person who desires to obtain practical instruction in the carrying on of the business of an auctioneer may be granted a provisional auctioneer's licence.

(2) A provisional auctioneer's licence—

- (a) shall take effect from the date of its issue; and
- (b) despite section 26,²⁰ may be renewed on not more than 2 occasions; and
- (c) shall, subject to this Act, authorise the holder to act during the currency of the licence and in accordance with the terms and conditions as an auctioneer, under the direct supervision and instruction of a person who is the holder of a general auctioneer's licence, or a restricted auctioneer's licence.

(3) The holder of a provisional auctioneer's licence shall not—

- (a) carry on or advertise, notify or state that the holder carries on, on the holder's own behalf, the business of an auctioneer; or
- (b) subject to subsection (5), receive, hold, or deal with in any manner whatever money in respect of any sale conducted by the holder under the authority of that licence.

(4) Subject to subsection (5), the holder of a general auctioneer's licence, or a restricted auctioneer's licence under whose direct supervision and instruction a holder of a provisional auctioneer's licence is placed shall not permit or allow the holder of the provisional auctioneer's licence to receive, hold, or deal with in any manner money in respect of any sale conducted by the holder of the provisional auctioneer's licence under the authority of that licence.

(5) The holder of a provisional auctioneer's licence who is also the holder of another licence in respect of which the holder operates a trust account under this Act may receive, hold and deal with money in respect of any sale

²⁰ Section 26 (Grant of licence)

conducted by the holder as the holder of a provisional auctioneer's licence and shall comply with such of the provisions of part 7 as are applicable to such money.

(6) An application for a provisional auctioneer's licence shall, in addition to complying in all respects with section 25²¹—

- (a) contain particulars of the names and addresses of all holders of a general auctioneer's licence or restricted auctioneer's licence, under whose direct supervision and instruction it is intended that the applicant shall conduct sales by auction, if licensed; and
- (b) specify an address within the State which the applicant desires to be recorded as the applicant's registered address for the purposes of this Act to which all communications and notices may be posted.

(7) A provisional auctioneer's licence, or the renewal or restoration of a provisional auctioneer's licence, shall not be granted to an applicant who—

- (a) is not resident in Queensland or within 65 km of the boundary of Queensland; or
- (b) is not 18 years of age; or
- (c) is not a person of good fame and character; or
- (d) is not a fit and proper person to hold such a licence.

(8) Despite subsection (7), a provisional auctioneer's licence shall not be granted to an applicant who has not completed, to the satisfaction of the committee, such written examination as is set by the committee unless exempted from such examination by the Minister on the recommendation of the committee.

Restricted auctioneers' licences

41.(1) Subject to this Act, a person who desires to conduct sales by auction of a particular class or classes only and not to conduct sales by auction generally may be granted a restricted auctioneer's licence.

(2) A restricted auctioneer's licence shall, subject to this Act, authorise

²¹ Section 25 (Application for licence)

the holder to act as an auctioneer only in relation to the class or classes of sales specified in the licence.

(3) An application for a restricted auctioneer's licence shall, in addition to complying in all respects with section 25,²² contain particulars of the class or classes of sales in respect of which the application is made.

(4) A restricted auctioneer's licence, or the renewal or restoration of a restricted auctioneer's licence, shall not be granted to an applicant who—

- (a) is not resident in Queensland or within 65 km of the boundary of Queensland; or
- (b) is not 21 years of age; or
- (c) is not a person of good fame and character; or
- (d) does not have business premises complying with the prescribed requirements (if any) unless exempted from this requirement by the Minister; or
- (e) is not a fit and proper person to hold such a licence.

(5) Despite subsection (4), a restricted auctioneer's licence shall not be granted to an applicant who has not—

- (a) completed, to the satisfaction of the committee, such written examination as is set by the committee unless exempted from such examination by the Minister on the recommendation of the committee; and
- (b) complied with such educational or other qualifications as are prescribed unless exempted by the committee from such qualifications.

Bogus advertisements

42. No person shall wilfully and falsely advertise or in any way wilfully and falsely represent that as an auctioneer the person has real or personal property for sale by auction.

²² Section 25 (Application for licence)

Sales of livestock

43.(1) Subject to subsection (2), where an auctioneer has sold any livestock received by the auctioneer for sale the auctioneer shall, before paying over the proceeds of the sale, require from the person who was the owner or possessor of the livestock at the time they were so received a certificate from some reputable person known to the auctioneer that such owner or possessor is a person of good repute and that the person so certifying believes that such owner or possessor became possessed of the livestock honestly.

(2) Subsection (1) shall not apply in any case where the auctioneer has been personally acquainted with the owner or possessor of the livestock for at least 1 year and knows the owner or possessor to be a person of good repute and has no reason to believe that the owner or possessor became possessed of the livestock dishonestly.

(3) An auctioneer who complies with subsection (1) or who is, under subsection (2) exempted from subsection (1), in respect of any livestock that may, after being sold by the auctioneer, be recovered under the provisions of any Act or law for the time being in force enabling a court to order and enforce repayment by a vendor of the amount paid to the vendor as purchase money of livestock adjudged to have been stolen or unlawfully obtained, shall, unless the court before whom the case is brought is satisfied that the auctioneer has been negligent in respect of such livestock, be exempt from the operation of such provisions.

(4) An auctioneer who complies with subsection (1) or who is, under subsection (2), exempted from subsection (1) in respect of any livestock sold by the auctioneer at auction, and who, in any proceedings against the auctioneer in any court satisfies the court that the auctioneer acted in good faith and under a reasonable belief that the person on whose behalf and by whose authority the auctioneer sold the livestock was the true owner, shall not be in any way liable to the owner of the livestock merely because such auctioneer took possession of or gave delivery of the livestock.

(5) In this section—

“livestock” means and includes horses, mares, fillies, foals, geldings, colts, bulls, bullocks, cows, heifers, steers, calves, ewes, wethers, rams, lambs and swine.

Code of professional conduct of auctioneers

44.(1) The committee may as a guide to the standard of professional conduct expected of auctioneers compile a code of professional conduct of auctioneers.

(2) The code must be approved by regulation.

Division 2—Real estate agents**Real estate agents' licences**

45.(1) A real estate agent's licence, or the renewal or restoration of a real estate agent's licence, shall not be granted to an applicant who—

- (a) is not resident in Queensland or within 65 km of the boundary of Queensland; or
- (b) is not 21 years of age; or
- (c) is not a person of good fame and character; or
- (d) does not have business premises complying with the prescribed requirements (if any); or
- (e) is not a fit and proper person to hold such a licence.

(2) Despite subsection (1), a real estate agent's licence shall not be granted to an applicant who has not—

- (a) completed, to the satisfaction of the committee, such written examination as is set by the committee unless exempted from such examination by the Minister on the recommendation of the committee; and
- (b) complied with such educational or other qualifications as are prescribed unless exempted by the committee from such qualifications.

(3) Where an applicant, whether or not the applicant is a managing agent within the meaning of the *Building Units and Group Titles Act 1980* or a body corporate manager within the meaning of the *South Bank Corporation Act 1989* or a letting agent within the meaning of the *Body Corporate and Community Management Act 1997*, wishes to carry on business as a real

estate agent restricted to the letting of lots in a building in which the applicant resides or will, if granted a licence, reside, the committee shall exempt the applicant from the educational and any other qualifications prescribed under subsection (2)(b) and may grant the applicant a licence if the applicant—

- (a) complies with the requirements mentioned in subsections (1)(b), (c) and (e) and (2)(a); and
- (b) has an office in that building, from which the applicant will carry on business if granted a licence or satisfies the committee that the applicant will have such an office before the applicant commences to carry on business; and
- (c) has entered into an agreement in writing with the body corporate (within the meaning of the *Building Units and Group Titles Act 1980*) of the building authorising the applicant to carry on the business or, if the building is scheme land for a community titles scheme within the meaning of the *Body Corporate and Community Management Act 1997*, has the approval of the body corporate for the scheme to carry on the business.

(4) The committee may grant the renewal or restoration of a licence granted under subsection (3) if the applicant—

- (a) continues to reside in the building mentioned in the endorsement shown on the applicant's licence under subsection (4)(a); and
- (b) complies with the requirements mentioned in subsections (1)(c) and (e) and (3)(b) and (c).

(5) If the committee grants a real estate agent's licence under subsection (3), or the renewal or restoration of a real estate agent's licence under subsection (4)—

- (a) the licence, or renewal or restoration, shall be granted subject to the condition, to be endorsed on the licence, that the holder, in carrying on business as a real estate agent, is restricted to the letting of lots in a building specified in the condition; and
- (b) the holder of the licence shall, in carrying on business as a real estate agent, comply in every respect with the condition endorsed on the licence as mentioned in paragraph (a) and shall not act in any manner as a real estate salesperson.

(6) The validity of a licence granted under this section before 4 May 1994²³ cannot be questioned on the ground that an agreement under subsection (3)(c) purportedly made between the licensee and a body corporate before 4 May 1994 authorising the licensee to carry on business in the building is invalid because the body corporate did not then have power to enter into the agreement.

Sole agencies, multiple listings etc.

46.(1) A person licensed to carry on business as a real estate agent (other than a person licensed under section 45(3) or (4)) may agree in writing to act as agent for the sale of any property upon the terms that the person is to be paid commission if the property is sold by the person or by any other person (including the person's principal) whether or not, in order to facilitate the sale of the property, the person is authorised or required to give particulars of it to other real estate agents.

(2) A person licensed to carry on business as a real estate agent shall not make an agreement of the kind referred to in subsection (1) unless, before making the agreement, the person—

- (a) completes, in duplicate, a statement in the approved form; and
- (b) gives 1 copy of the statement to the person's principal; and
- (c) retains the other copy after obtaining from the person's principal an acknowledgment on it of receipt of a copy of the statement.

Maximum penalty—100 penalty units.

(3) If a person licensed to carry on business as a real estate agent commits an offence against subsection (2) and the property, in respect of which the agreement is made, is sold by a person other than the licensee, or the licensee's partner or employee, the agreement shall be void and the licensee shall not be entitled to be paid any commission in respect of the sale.

²³ This is the date as from which the deficiency of power was rectified (see the *Body Corporate and Community Management Act 1997*, section 289 (Letting agent authorisation)).

Bogus advertisements

47.(1) No person who is the holder of a real estate agent's licence shall falsely advertise or falsely represent that the person has real or personal property for sale or that the person has real property for letting or is able to supply particulars of real property for sale or letting.

(2) If a person is charged with an offence against subsection (1), it shall be a sufficient defence if the person charged proves that, in relation to the false advertisement or false representation, the person had reasonable grounds for believing and did in fact believe that the advertisement or representation was true.

Maximum penalty—100 penalty units.

Code of professional conduct of real estate agents

48.(1) The committee may as a guide to the standard of professional conduct expected of real estate agents and real estate salespersons, compile a code of professional conduct of real estate agents.

(2) The code must be approved by regulation.

*Division 3—Commercial agents***Commercial agents' licences**

49.(1) A commercial agent's licence, or the renewal or restoration of a commercial agent's licence, shall not be granted to an applicant who—

- (a) is not resident in Queensland or within 65 km of the boundary of Queensland; or
- (b) is not 21 years of age; or
- (c) is not a person of good fame and character; or
- (d) does not have business premises complying with the prescribed requirements (if any); or
- (e) is not a fit and proper person to hold such a licence.

(2) Despite subsection (1), a commercial agent's licence shall not be granted to an applicant who has not—

- (a) completed, to the satisfaction of the committee, such written examination as is set by the committee unless exempted from such examination by the Minister on the recommendation of the committee; and
- (b) complied with such educational or other qualifications as are prescribed unless exempted by the committee from such qualifications.

Licence not to confer additional powers

50.(1) No commercial agent, person who holds a manager's (commercial agency) licence or commercial subagent shall, because of being licensed or, as the case may be, registered, have any power or authority which the person would not have if this Act had not been passed.

(2) No commercial agent, person who holds a manager's (commercial agency) licence or commercial subagent shall in any way—

- (a) suggest or imply that because of the person's licence or, as the case may be, registration, the person may exercise any power or authority which in fact the person could not exercise if this Act had not been passed; or
- (b) use or attempt to use the person's licence or, as the case may be, registration, to exercise or as entitling the person to exercise any such power or authority.

Production of licences etc.

51. A commercial agent, a person who holds a manager's (commercial agency) licence and a commercial subagent shall on demand produce the person's licence or, as the case may be, certificate of registration, for inspection—

- (a) to the registrar, a deputy registrar, an assistant registrar, an inspector, or to a police officer; and
- (b) to any person with whom the person has dealings when carrying out any of the functions of a commercial agent.

Unlawful entry

52. A commercial agent or commercial subagent shall not, when exercising or carrying on functions as such, enter any premises without lawful authority.

Misrepresentation

53. A commercial agent or commercial subagent shall not by any false or misleading or deceptive statement, representation or promise, or by any wilful concealment of a material fact induce or attempt to induce any person to enter into any agreement or contract in connection with the business of the commercial agent as such.

Falsely pretending to be a commercial agent

54.(1) No creditor, when dealing with a debtor for payment of a debt, shall assume or adopt any name, title or description, or use any document or device, calculated to induce the debtor to believe that the debtor is not dealing directly with the creditor, but with some other person acting on the creditor's behalf.

Maximum penalty—100 penalty units.

(2) No person (whether or not the person is a licensed commercial agent, the holder of a manager's (commercial agency) licence or a registered commercial subagent) shall supply or lend any document or form to another person for the purpose of enabling that other person to induce a debtor to believe that the debtor is not dealing directly with the creditor, but with some other person acting on the creditor's behalf.

Maximum penalty—100 penalty units.

Debtors not to be charged expenses of debt collecting

55.(1) No person who—

- (a) exercises or carries on any of the functions of a commercial agent (whether licensed or not) or commercial subagent (whether registered or not); or
- (b) acts for or in collusion with a person referred to in paragraph (a);

shall be entitled to charge, recover or receive from any debtor of a creditor any sum of money or valuable consideration for or on account of any costs, charges, or expenses (other than stamp duties and any legal costs fixed by or payable under any rules of court or order of a court) or any remuneration or payment for or in connection with the collection of a debt.

(2) Subsection (1)—

- (a) shall not be construed as affecting or removing any right existing from time to time of an owner or grantee to recover any costs, charges, or expenses in respect of the repossession of goods which are the subject of a hire-purchase agreement or a bill of sale; and
- (b) shall not extend to any sum charged, recovered, or received for or on account of the reasonable costs incurred by such owner or grantee where the owner or grantee forbears at the request of the hirer or the person whose goods are comprised in the bill of sale (whichever is applicable) to take possession of such goods.

(3) No person shall charge, recover, or receive, or attempt to charge, recover, or receive any sum of money or valuable consideration in contravention of subsection (1).

(4) Where any money or money's worth is directly or indirectly paid, or allowed to, or received by any person in contravention of this section the amount or value in respect of such contravention may, despite any contract to the contrary, be recovered by the debtor from such person, or if such person is the creditor or a partner, employer, employee, principal, or agent of the creditor, or is in any way acting in collusion with him or her, may be set off against the amount of the debt (which shall be deemed to be reduced accordingly) or may be recovered by the debtor from such person or from the creditor.

Code of professional conduct of commercial agents

56.(1) The committee may as a guide to the standard of professional conduct expected of commercial agents and commercial subagents, compile a code of professional conduct of commercial agents.

- (2) The code must be approved by regulation.

Division 4—Motor dealers**Motor dealers' licences**

57.(1) A motor dealer's licence, or the renewal or restoration of a motor dealer's licence, shall not be granted to an applicant who—

- (a) is not resident in Queensland or within 65 km of the boundary of Queensland; or
- (b) is not 21 years of age; or
- (c) is not a person of good fame and character; or
- (d) does not have business premises complying with the prescribed requirements (if any); or
- (e) is not a fit and proper person to hold such a licence.

(2) Despite subsection (1), a motor dealer's licence shall not be granted to an applicant who has not—

- (a) completed, to the satisfaction of the committee, such written examination as is set by the committee unless exempted from such examination by the Minister on the recommendation of the committee; and
- (b) complied with such educational or other qualifications as are prescribed unless exempted by the committee from such qualifications.

Register to be kept by licensees

58.(1) Every motor dealer shall keep a register, in the approved form, at all premises in respect of which the motor dealer is licensed as a motor dealer, and shall record in the register the prescribed particulars of every transaction entered into in the course of dealing there.

(2) A motor dealer shall produce the register kept under this section, for inspection, on demand, to the registrar, a deputy registrar, an assistant registrar, an inspector or to a police officer.

(3) No person shall knowingly make a false entry or cause a false entry to be made in any register kept under this section.

Inspection of used motor vehicles

59.(1) Every motor dealer shall permit the registrar, a deputy registrar, an assistant registrar, an inspector or a police officer, at all reasonable hours to enter upon the premises in respect of which the licence is issued, with such persons as the person may require to assist him or her, and there to examine any used or second-hand motor vehicle or any prescribed spare parts or accessories.

(2) No person shall obstruct or hinder the registrar, a deputy registrar, any assistant registrar, or inspector or any police officer in the exercise of powers under subsection (1).

Guarantee of title

60.(1) This section applies if a used motor vehicle is sold by or for a motor dealer to someone else (a “**buyer**”).

(2) The motor dealer must ensure the buyer gains clear title to the motor vehicle at the time of sale.

Maximum penalty—20 penalty units.

(3) In a proceeding for an offence against subsection (2), it is a defence for the motor dealer to prove that the dealer took all reasonable steps to ensure subsection (2) is complied with.

(4) The motor dealer must on the day of, and before, the sale—

- (a) give the buyer a security interest certificate for the vehicle issued on the day of sale; and
- (b) give the buyer an approved form stating—
 - (i) particulars about the vehicle, including its identity and odometer reading at the time of sale; and
 - (ii) that the dealer has ensured that the buyer will gain clear title to the vehicle at the time of sale; 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—20 penalty units.

(5) A proceeding against a motor dealer for an offence against subsection (2) does not affect the civil liability of the dealer.

(6) In this section—

“**sold**” includes sold by auction.

Statement of vendor

61.(1) Subject to subsection (2), a motor dealer shall, when purchasing a motor vehicle or accepting a motor vehicle on consignment, obtain from the vendor or, as the case may be, the vendor’s principal, a statement in duplicate setting out such information as may be prescribed, signed by the vendor or principal, and shall retain 1 copy and give the other to the vendor or principal.

(2) It shall not be necessary for a motor dealer to comply with subsection (1) in respect of a transaction between the motor dealer and—

- (a) a financier of the business of the motor dealer; or
- (b) another motor dealer.

Each place of business to be approved

62. A licensed motor dealer shall not carry on business at a place other than the business premises referred to in the motor dealer’s application for a licence or for renewal or restoration of a licence unless the motor dealer lodges an application in the approved form with the registrar and satisfies the committee that the motor dealer has business premises at that other place that comply with the requirements prescribed for the purposes of section 57(1)(d).²⁴

Maximum penalty—100 penalty units.

Bogus advertisements

63. No person shall wilfully and falsely advertise or in any way wilfully

²⁴ Section 57 (Motor dealers’ licences)

and falsely represent that as a motor dealer the person has used or second-hand motor vehicles for sale.

Tampering with odometers

64.(1) A person must not tamper with a motor vehicle's odometer with intent to falsely represent that, at a particular time, the vehicle had not travelled more than a specified distance.

Maximum penalty—100 penalty units.

(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 a person who has suffered loss, order the person who committed the offence to compensate 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 had not travelled more than the 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.

Evidence of tampering by a motor dealer

65.(1) Evidence that a motor vehicle's odometer was tampered with when the vehicle was in a dealer's possession is evidence that the dealer contravened section 64(1).²⁵

(2) Evidence that a motor vehicle's odometer reading shortly after a dealer had possession of the vehicle was less than its reading when the dealer took possession of the vehicle is evidence the dealer contravened section 64(1).

(3) In this section—

“possession” of a motor vehicle includes custody and control of the vehicle.

²⁵ Section 64 (Tampering with odometers)

Code of professional conduct of motor dealers

66.(1) The committee may as a guide to the standard of professional conduct expected of motor dealers and motor salespersons, compile a code of professional conduct of motor dealers.

(2) The code must be approved by regulation.

Production of licences etc.

67. A motor dealer, a holder of a manager's (motor dealing) licence or a motor salesperson shall, on demand, produce the person's licence or, as the case may be, certificate of registration, for inspection—

- (a) to the registrar, a deputy registrar, an assistant registrar, an inspector, or to a police officer; and
- (b) to any person with whom the first person has dealings when performing any of the functions of a motor dealer or, as the case may be, a motor salesperson.

Transactions in used motor vehicles to be notified

68.(1) Every motor dealer acquiring or selling a used or second-hand motor vehicle shall, immediately after the acquisition or sale—

- (a) send to the authority that registered the vehicle, if within Queensland, such particulars of the transaction as may be prescribed; or
- (b) where that authority is not within Queensland, deliver the number plates (if any) attached to the vehicle to the nearest registering authority in Queensland.

(2) Upon the expiration or cancellation of the registration of a used or second-hand motor vehicle that is in the possession of a motor dealer, the motor dealer shall, unless renewing the registration, return any number plates attached to the vehicle to the nearest registering authority in Queensland.

(3) Nothing in this section affects the obligation of a person to apply for the transfer of the registration of a motor vehicle, under the provisions of any other Act.

Division 5—General**Restriction on agents purchasing or selling property**

69.(1) It shall not be lawful for—

- (a) any auctioneer, real estate agent or motor dealer, whether directly or indirectly by the person or by any partner or employee of the person, to purchase or be in any way concerned or beneficially interested in the purchase of any property (other than perishable farm produce) placed in the person's hands or in the hands of any corporation, partnership or firm of which the person is a director, member or employee for sale privately or by auction or on commission by any principal without having obtained the consent in writing in the approved form of such principal to such purchase before the making of the agreement relating to such purchase; or
- (b) any employee of an auctioneer, a real estate agent, or a motor dealer, to be in any way concerned or beneficially interested in the purchase of any property placed in the employer's hands for sale by auction or on commission by the owner without having previously obtained the consent in writing of such owner to such purchase; or
- (c) any auctioneer, real estate agent or motor dealer to charge commission to the principal in respect of any property that is taken over by such auctioneer, real estate agent or motor dealer or any employee as a purchaser or for the person's own use or in respect of any property that is the subject of a purchase in which the auctioneer, real estate agent or motor dealer is beneficially interested whether or not the person has obtained the consent referred to in subparagraph (a) or (b).

Maximum penalty—100 penalty units.

(2) An auctioneer, a real estate agent, motor dealer or an employee of any such person, who has for sale any property that is owned by such person or in which such person is beneficially interested shall, before making any agreement in respect of the sale of the property, notify the prospective purchaser in the approved form of the interest in the property and obtain from the purchaser an acknowledgement of receipt of the notice.

(3) Where an offence against subsection (1) has been committed, the auctioneer, real estate agent, motor dealer or other person shall, upon conviction, and in addition to any other penalty the court may impose, be ordered by the court to pay over to the convicted person's principal such amount in respect of profits resulting from the purchase in respect of which the offence was committed as is determined by the court.

(4) For the purpose of making a determination under subsection (3), the court—

- (a) shall have all the powers, protection and jurisdiction of a commission of inquiry under the *Commissions of Inquiry Act 1950*, save any such powers, protection and jurisdiction as are, by those Acts, confined to a chairperson, being a judge of the Supreme Court; and
- (b) may order that the property be valued by a person appointed by the court for that purpose and—
 - (i) in the case of real property, that the person so appointed be allowed access to the property at such times as are specified in the order; or
 - (ii) in the case of any other property, that the property be produced at such time and place and by such person as are specified in the order;

to enable the valuation to be made.

(5) A person who fails to comply with an order made under subsection (4)(b) or who obstructs or attempts to obstruct a person appointed by the court under that paragraph in making a valuation shall be guilty of an offence against this Act.

(6) Where a court makes a determination under subsection (3), it may order that the person convicted pay such costs of and incidental to the making of the determination as it thinks fit.

(7) Where a court makes or refuses to make an order under subsection (3), an appeal shall lie in all respects and in the same manner as if the court had imposed a penalty or a punishment.

(8) Where an order for the payment of an amount in respect of profits or costs is made under this section, an order that, upon default in payment of the amount the person in default be imprisoned or that the amount be

recovered by levy and distress shall not be made, but subsections (9) and (10) apply in relation to the recovery.

(9) Where an order referred to in subsection (8) is made, the clerk of magistrates courts or other person having custody of the record of the proceeding in which the order was made shall furnish to the principal a certificate of the order in the approved form and that certificate may be registered in a court having jurisdiction to entertain civil proceedings in which the amount claimed is the amount of the order.

(10) The registrar of a court to whom a certificate referred to in subsection (9) is duly produced for registration shall, upon payment of the appropriate fee, register the certificate in the court and on registration the certificate shall be a record of the court in which it is registered and the order to which it refers shall be deemed to be a judgment of that court, duly entered, obtained by the person to whom the certificate was furnished as plaintiff against the person in default as defendant for the payment to the plaintiff of money comprising—

- (a) the amount ordered to be paid in respect of profits; and
- (b) any costs ordered to be paid by the person in default in the proceeding in which the order was made in respect of profits; and
- (c) costs of registration of the certificate in the court;

to the intent that like proceedings (including proceedings in bankruptcy) may be taken to recover the amount of the judgment as if the judgment had been given by such court in favour of the plaintiff.

When agent prohibited from having interest in option to purchase land

70.(1) An auctioneer or real estate agent shall not, in respect of land had by the auctioneer or real estate agent for sale, obtain or be in any way concerned in obtaining from the seller an option to purchase in which that auctioneer or real estate agent is beneficially interested.

Maximum penalty—100 penalty units.

(2) An auctioneer or a real estate agent shall not as such sell land at any time when, in respect of that land, there is subsisting an option to purchase in which that auctioneer or real estate agent is beneficially interested.

Maximum penalty—100 penalty units.

(3) For the purposes of this section—

- (a) an option to purchase includes any transaction granting or purporting to grant a right not immediately exercisable to purchase or to be given an option to purchase;
- (b) “**sell**”, in relation to an auctioneer or a real estate agent acting as such, means sell, agree to sell, attempt to sell, have for sale, negotiate for a sale, or be in any way concerned in selling.

(4) Where an offence against subsection (1) or (2) has been committed, the auctioneer or real estate agent shall, upon conviction, and in addition to any other penalty the court may impose, be ordered by the court to pay over to the convicted person’s principal such amount in respect of profits resulting from the person obtaining the option in respect of which the offence was committed as is determined by the court.

(5) Where a court makes a determination under subsection (4), it may order that the person convicted pay such costs of and incidental to the making of the determination as it thinks fit.

(6) For the purposes of making a determination and enforcing an order under subsection (4) or (5), section 69(4), (5) and (8) to (10) shall apply with all necessary modifications.

(7) Where a court makes or refuses to make an order under subsection (4), an appeal shall lie in all respects and in the same manner as if the court had imposed a penalty or a punishment.

Beneficial interest

71.(1) In this section—

“**prescribed relative**”, in respect of a person, means the spouse, parent, brother, sister or child of that person.

(2) For the purposes of—

- (a) section 69²⁶—an auctioneer, a real estate agent or motor dealer is taken to be beneficially interested in the purchase or sale of

²⁶ Section 69 (Restriction on agents purchasing or selling property)

Auctioneers and Agents Act 1971

property; and

- (b) section 70—an auctioneer or real estate agent is taken to be beneficially interested in an option to purchase land;

if the purchase or sale is made or the option is obtained, as the case may be, on behalf of—

- (c) if the auctioneer, real estate agent or motor dealer is an individual—
- (i) that individual or a prescribed relative of the individual; or
 - (ii) a corporation of which the individual or a prescribed relative of the individual is an executive officer; or
 - (iii) a corporation, having not more than 100 members, of which the individual or a prescribed relative of the individual is a member; or
- (d) if the auctioneer, real estate agent or motor dealer is a corporation—
- (i) the corporation or an executive officer or a prescribed relative of an executive officer of the corporation; or
 - (ii) if the corporation has not more than 100 members, any member or a prescribed relative of a member of that corporation; or
 - (iii) another corporation that has at least 1 executive officer in common with the corporation; or
 - (iv) another corporation, having not more than 100 members, of which the corporation is a member or having at least 1 member in common with the corporation; or
- (e) if the auctioneer, real estate agent or motor dealer carries on business as a member of a firm or partnership—a person who is a member of the firm or partnership or a prescribed relative of a member; or
- (f) a person carrying on for profit or gain a business if the auctioneer, real estate agent or motor dealer, or a prescribed relative of the auctioneer, real estate agent or motor dealer, has, directly or indirectly, a right to participate in the income or profits of the

business of the person.

(3) For the purposes of section 69, an employee of an auctioneer, real estate agent or motor dealer shall be deemed to be beneficially interested in the purchase or, as the case may be, sale of property if the purchase or sale is made on behalf of—

- (a) the employee or a prescribed relative of the employee; or
- (b) a corporation (not being a corporation consisting of more than 100 members), body or association of persons, firm or partnership, carrying on business for profit or gain, of which the employee or a prescribed relative of the employee is a member; or
- (c) any person carrying on for profit or gain a business if the employee (or a prescribed relative of the employee) has, directly or indirectly, a right to participate in the income or profits of the business of that person.

(4) To allay any doubt it is declared that any reference in—

- (a) section 69 and this section to auctioneer, real estate agent or motor dealer; or
- (b) section 70 to auctioneer or real estate agent;

includes reference to a corporation that acts as or carries on the business of an auctioneer, real estate agent or motor dealer, as the case may be.

False representations as to property

72.(1) No auctioneer, real estate agent, or motor dealer, or employee of an auctioneer, a real estate agent, or a motor dealer, shall make to any purchaser or prospective purchaser or publish or cause to be published any statement or representation that is false or misleading (whether to the person's knowledge or not) concerning any real or personal property which the person, or as the case may be, the person's employer, has for sale by auction or as a real estate agent or as a motor dealer, as the case may be.

Maximum penalty—100 penalty units.

(2) No real estate agent or employee of a real estate agent shall make or give to any person, or publish or cause to be published, any statement or

representation that is false or misleading (whether to the agent's or employee's knowledge or not) concerning any real property that is available for letting.

Maximum penalty—100 penalty units.

(3) Without limiting the generality of subsection (1) or (2), a statement or representation shall, for the purposes of that subsection, be deemed to be false or misleading if it is of such a nature that 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 statement or representation indicates that that state of affairs does exist.

(4) A statement shall be deemed to be published within the meaning of this section if it is—

- (a) inserted in any newspaper (including any periodical) or any other publication circulated in Queensland; or
- (b) publicly exhibited—
 - (i) in, on, over, or under any building, vehicle, or place (whether or not a public place and whether on land or water); or
 - (ii) in the air in view of persons being or passing in or on any street or public place; or
- (c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person; or
- (d) broadcast by wireless transmission or television.

(5) If a person is charged with an offence against subsection (1) or (2)—

- (a) it shall be a sufficient defence if the person charged proves that, in relation to a false statement or representation, the person had reasonable grounds for believing and did in fact believe that the statement or representation was true, or that, in relation to a misleading statement or representation, that the person had reasonable grounds for believing and did in fact believe that the statement or representation was not misleading; and
- (b) it shall not be a defence to prove that the sale to the purchaser was rescinded or that the prospective purchaser did not buy or, in the

case of an offence against subsection (2), that the property was not let because of the statement or representation.

(6) Despite any proceedings against any person for an offence against this section (whether resulting in a conviction or otherwise) such person shall remain liable in all civil proceedings in like manner as if the proceedings for an offence had not been taken.

(7) This section shall be read and construed as in aid of and not in derogation from any other Act or law relating to false or misleading advertisements or other statements.

Representations as to availability of finance

73.(1) An auctioneer who sells by auction, or a real estate agent who as such or as a principal sells any land, whether improved or unimproved, shall give to the purchaser a statement in writing in compliance in every respect with the requirements of this section.

(2) A statement in writing under this section shall—

- (a) clearly identify the land to which the statement relates; and
- (b) state the names and addresses respectively of the seller and purchaser; and
- (c) state clearly whether or not the auctioneer or real estate agent has (by the auctioneer or real estate agent or by an employee) made or offered to the purchaser any representation, promise or term with respect to the availability of finance for defraying wholly or in part the purchase price; and
- (d) if any such representation, promise, or term has been so made or offered, in addition to stating clearly that fact, state clearly the particulars of that representation, promise or term; and
- (e) state the date on which the statement is given; and
- (f) be signed by the auctioneer or real estate agent or by a person authorised in writing (prior notice of which, accompanied by a copy of the authority, has been delivered to the registrar) by the auctioneer or real estate agent;

and shall not contain any other written, typewritten, or printed matter except

the letterhead (if any) of the auctioneer or real estate agent.

(3) A statement in writing under this section shall be given by the auctioneer or real estate agent to the purchaser before the purchaser signs any contract, agreement, or document legally binding or intended to bind the purchaser legally in respect of the sale.

(4) If, in respect of the sale of any land, whether improved or unimproved—

(a) by an auctioneer by auction; or

(b) by a real estate agent whether as such or as a principal;

finance for defraying in whole or in part the purchase price, or any amount or instalment of that finance, is not made available to the purchaser in compliance in every respect with any representation, promise, or term made or offered to the purchaser by, or by an employee of, that auctioneer or real estate agent, then, if the purchaser has been materially affected, the purchaser may at the purchaser's option avoid the contract made by the purchaser in respect of the sale by notice in writing given either to the seller or to the auctioneer or real estate agent concerned at any time before the time at which the purchaser is required by the contract to pay all of the outstanding purchase price or immediately after that time.

(5) Upon the avoidance (whether by the purchaser under this section or by the seller for that the purchaser has failed to pay in terms of the contract the purchase price or any amount of the purchase price) of a contract to which subsection (4) applies, the seller and the auctioneer or real estate agent concerned shall be liable at law, jointly and severally, for the repayment to the purchaser of all money paid by the purchaser under the contract and such money shall be recoverable, by action as for a debt, by the purchaser accordingly.

(6) Judgment recovered against either person liable under subsection (5) in respect of money repayable under that subsection shall not be a bar to an action against the other person so liable, but if separate actions are brought against those persons the sums recoverable under the judgments given in those actions shall not in the aggregate exceed the amount of money repayable to the purchaser concerned and in the one of those actions in which judgment is secondly given the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action.

(7) Where a representation, promise, or term to which this section applies shall have been given, made or offered without the knowledge, connivance, or consent of the seller, the seller may recover from the auctioneer or real estate agent concerned any money paid under the contract and not received by the seller which the seller has repaid to the purchaser, and additionally any damage suffered by the seller consequent on the voidance by the purchaser of the contract.

(8) Any covenant, agreement, or condition expressed or implied in any contract, agreement, or document legally binding, or intended legally to bind, the purchaser in respect of the sale to the purchaser of any land, or in a separate document, under which it is agreed between the seller or the auctioneer or real estate agent concerned of the one part and the purchaser of the other part that any representation, promise, or term made or offered to the purchaser for which the seller or the auctioneer or real estate agent is legally liable under this section, shall not be legally binding as against that seller and auctioneer or real estate agent, or either of them, shall be absolutely void and of no legal effect.

(9) An auctioneer or a real estate agent who—

- (a) being required by subsection (1) fails to give to a purchaser of land a statement in writing in compliance in every respect with the requirements of subsections (2) and (3); or
- (b) being liable at law under this section for repayment to a purchaser of land of any money paid by that purchaser under the contract entered into by the purchaser, fails to make such repayment in full within 14 days after becoming so liable;

shall be guilty of an offence against this Act

Maximum penalty—100 penalty units or 12 months imprisonment.

(10) Liability to punishment under this section shall be in addition to other liabilities at law imposed by this section, and the fact that an auctioneer or a real estate agent has not been prosecuted or, if prosecuted, has or has not been convicted for an offence against this section shall not bar or prejudice any proceedings for enforcing against the auctioneer or real estate agent any such other liability.

(11) Subject to subsection (4), this section applies so as not to render illegal or void any contract or to empower any party to void the contract.

(12) In any civil proceedings arising out of or connected with a contract or agreement or document to which this section relates the onus of proving that the statement referred to in subsection (2) was duly given shall lie upon the party so alleging.

(13) In this section—

- (a) a promise that a seller of land will transfer the land to the purchaser conditionally upon the purchaser at the same time executing a proper mortgage in favour of the seller to receive payment of all or any part of the money payable or that would afterwards but for the execution of the mortgage become payable by the purchase under the contract of sale; or
- (b) a promise that the terms of the sale will be or will include a provision that the purchase price or any part shall be or may be paid by instalments;

shall not be taken to be a representation, promise or term as respects the availability of finance for defraying wholly or in part the purchase price.

Lands not lawfully usable for residential purposes

74.(1) An auctioneer who sells by auction or a real estate agent who as such or as a principal sells any vacant land within—

- (a) the area of the City of Brisbane; or
- (b) any area within the meaning of the *Local Government Act 1993*;

the use of which for residential purposes is unlawful as at the date of the sale shall give to the purchaser a statement in writing in compliance in every respect with the requirements of this section.

(2) A statement in writing under this section shall—

- (a) clearly identify the land to which the statement relates; and
- (b) state the names and addresses respectively of the purchaser and seller; and
- (c) state clearly that the use of the land for residential purposes is unlawful; and
- (d) inform, by a separate paragraph in the statement, the purchaser that if the purchaser erects on the land a dwelling house or

otherwise uses the land for residential purposes contrary to law the purchaser will be guilty of an offence, and additionally inform the purchaser that Brisbane City Council or, as the case may be, other appropriate local government (naming that local government) is lawfully empowered to demolish any dwelling house or other residential structure erected on the land contrary to law; and

- (e) state the date on which the statement is given; and
- (f) be signed by the auctioneer or real estate agent or by a person authorised in writing (prior notice of which accompanied by a copy of the authority has been delivered to the registrar) by the auctioneer or real estate agent;

and shall not contain any other written, typewritten, or printed matter except the letterhead (if any) of the auctioneer or real estate agent giving it.

(3) A statement in writing under this section shall be given by the auctioneer or real estate agent to the purchaser before the purchaser signs any contract, agreement, or document legally binding or intended legally to bind the purchaser in respect of the sale.

(4) If in respect of the sale of any land to which this section applies—

- (a) by an auctioneer by auction; or
- (b) by a real estate agent whether as such or as a principal;

a statement in writing shall not have been given to the purchaser in compliance in every respect with the requirements of this section, then the purchaser may at the purchaser's option void the contract entered into by the purchaser in respect of that sale by notice in writing given either to the seller or to the auctioneer or real estate agent concerned within 6 months after the purchaser shall have entered into the contract but a contract shall not be subject to avoidance under this subsection because of any defect, error, or irregularity in the statement in writing given to the purchaser under this section that is a defect, error, or irregularity in form and not in substance and that is not likely to mislead or otherwise prejudicially affect the purchaser.

(5) Upon the avoidance not later than 6 months after the purchaser shall have entered into the contract (whether by the purchaser under this section or by the seller for that the purchaser has failed to pay in terms of the

contract the purchase price or any amount) of a contract to which subsection (4) applies, the seller and the auctioneer or real estate agent concerned shall be liable at law, jointly and severally, for the repayment to the purchaser of all money paid by the purchaser under the contract and such money shall be recoverable, by action as for a debt, by the purchaser accordingly.

(6) Judgment recovered against either person liable under subsection (5) in respect of money repayable under that subsection shall not be a bar to an action against the other person so liable, but if separate actions are brought against those persons the sums recoverable under the judgments given in those actions shall not in the aggregate exceed the amount of money repayable to the purchaser concerned, and in the one of those actions in which judgment is secondly given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action.

(7) Where under this section a purchaser voids a contract entered into by the purchaser for the purchase of land to which this section applies after the assurance to the purchaser of title to the estate in that land purchased by the purchaser, then that purchaser shall, subject to the tender to the purchaser of repayment in full as prescribed by subsection (5), execute such instruments as, being necessary to reassure that title to the seller or the seller's nominee, are presented to the purchaser for execution by or on behalf of the seller and deliver up to the seller or the seller's nominee any relevant instrument of title in the purchaser's possession or under the purchaser's control, but the purchaser shall not be liable for any costs or expenses in respect of such reassurance of title.

(8) Any covenant, agreement, or condition expressed or implied in any contract, agreement, or document legally binding, or intended legally to bind, the purchaser in respect of the sale to that purchaser of any land to which this section applies, or in a separate document, under which it is agreed between the seller or the auctioneer or real estate agent concerned of the one part and the purchaser of the other part that this section shall not apply in respect of that sale, or shall so apply subject to exceptions, limitations, or restrictions, or otherwise affecting or prejudicing the rights and remedies had by the purchaser under this section, shall be absolutely void and of no legal effect.

(9) An auctioneer or a real estate agent who—

- (a) being required by subsection (1) fails to give to a purchaser of land to which this section applies a statement in compliance in every respect with the requirements of subsections (2) and (3); or
- (b) being liable at law under this section for repayment to a purchaser of land to which this section applies of any money paid by that purchaser under the contract entered into by the purchaser, fails to make such repayment in full within 14 days after becoming so liable;

shall be guilty of an offence against this Act.

Maximum penalty—100 penalty units or 12 months imprisonment.

(10) Liability to punishment under this section shall be additional to other liabilities at law imposed by this section, and the fact that an auctioneer or real estate agent has not been prosecuted or, if prosecuted, has or has not been convicted for an offence against this section shall not bar or prejudice any proceedings for enforcing against the auctioneer or real estate agent any such liability.

(11) In any civil proceedings arising out of or connected with a contract or agreement or document to which this section relates, the onus of proving that the statement referred to in subsection (2) was duly given shall lie upon the party so alleging.

(12) In this section—

“**vacant land**” means land on which there are no structural improvements other than fencing.

When the Minister may cancel licences

75.(1) The registrar may by notice in writing call upon any auctioneer or real estate agent to attend before the committee at the place, upon the day, and at the time specified in the notice, and there and then to satisfy the committee in respect of any of the following matters—

- (a) that, in respect of a sale of land effected by that auctioneer by auction, or by that real estate agent, whether as such or as a principal, neither the auctioneer or real estate agent nor any employee has made or offered to the purchaser any representation, promise, or term as respects the availability of

finance for defraying wholly or in part the purchase price which has not been fulfilled according in every respect as so made or offered or, alternatively, where the making or offering of such a representation, promise, or term which has not been fulfilled is admitted, that the same was made or offered bona fide and the fulfilment of which in every respect as made or offered was prevented by circumstances arising after it was made or offered, being circumstances of which the auctioneer or real estate agent neither had knowledge nor could, by the exercise of due care and diligence, have acquired knowledge before effecting the sale in question;

- (b) that in respect of a sale or purchase of a proposed allotment (within the meaning of the *Land Sales Act 1984*) effected by that auctioneer or real estate agent, whether as such or as a principal, the auctioneer or real estate agent has complied with part 2 of that Act binding upon the auctioneer or real estate agent;
- (c) that in respect of a sale or purchase of a proposed lot (within the meaning of the *Land Sales Act 1984*) effected by that auctioneer or real estate agent, whether as such or as a principal, the auctioneer or real estate agent has complied with part 3 of that Act binding upon the auctioneer or real estate agent;
- (d) that, in respect of a sale of land (being land to which section 74 applies) effected by that auctioneer by auction, or by that real estate agent, whether as such or as a principal, prior to the entry by the purchaser into any contract or agreement in respect of the sale, the auctioneer or real estate agent informed the purchaser of the provisions of section 74, and in particular of the rights of the purchaser under that section, and further that such auctioneer or real estate agent has complied in every respect with the provisions binding upon the person of that section.

(2) The registrar shall not be required or compellable to give to an auctioneer or a real estate agent particulars of a matter specified in subsection (1) in respect of which the registrar requires that auctioneer or real estate agent to satisfy the committee as provided in that subsection.

(3) If any auctioneer or real estate agent required by the registrar under this section—

- (a) fails to attend before the committee at the place, upon the day, and at the time specified by the registrar; or
- (b) upon attending before the committee fails, in respect of the matter of the person's attendance before the committee, to satisfy the committee in every respect as provided by subsection (1);

the committee shall certify accordingly to the Minister who may, in the Minister's absolute discretion and without assigning any reason except the certificate of the committee, cancel the licence or licences under this Act of that auctioneer or real estate agent.

(4) The committee may adjourn any attendance upon it required by the registrar under this section.

(5) This section shall apply so as not to derogate from any other provision of this Act relating to the cancellation of licences.

(6) This section shall be read and construed as if a reference to an auctioneer or a real estate agent includes a reference to a corporation that is the holder of a corporation licence.

Restriction on remedy for commission

76.(1) No person shall be entitled to sue for or recover or retain any fees, charges, commission, reward, or other remuneration for or in respect of any transaction as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, unless—

- (a) at the time of the transaction the person was the holder of a licence as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be, under this Act; and
- (b) being a corporation, it was, at the time of the transaction, the holder of a corporation licence under this Act and complied with the requirements of this Act relating to the carrying on by a corporation of the business of an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be; and
- (c) the engagement or appointment to act as auctioneer, real estate agent, commercial agent, or motor dealer in respect of such transaction is in writing signed by the person to be charged with such fees, charges, commission, reward, or remuneration, or the

person's agent or representative; and

- (d) where the same are prescribed under this Act, the fees, charges, commission, reward, or other remuneration are not in excess of the fees, charges, commission, reward, or other remuneration prescribed for or in respect of such transaction.

(2) Subsection (1)(c) shall not apply in respect of such transactions or classes of transactions as may be prescribed by regulation.

Offence to charge fee for preparing document

77. Without derogating from the *Legal Practitioners Act 1995*, section 19²⁷ or the *Queensland Law Society Act 1952*, section 39²⁸ an auctioneer, a real estate agent, a commercial agent, a motor dealer or an employee of any such person shall not charge any fee in connection with the preparation, provision or completion of any document in respect of any transaction relating to the business of the auctioneer, real estate agent, commercial agent or motor dealer.

Offence to demand excess or improper remuneration

78.(1) Where the fees, charges, commission, reward, or other remuneration which an auctioneer, a real estate agent, a commercial agent or a motor dealer shall be entitled to receive for or in respect of any service or transaction are prescribed, any auctioneer, real estate agent, commercial agent, or motor dealer who, for or in respect of such service or transaction demands, receives, or retains from any money received by the person an amount by way of fees, charges, commission, reward, or other remuneration which is in excess of or not included in the fees, charges, commission, reward, or other remuneration, as the case may be, so prescribed, shall be guilty of an offence against this Act.

Maximum penalty—100 penalty units or 12 months imprisonment.

Minimum penalty—10 penalty units.

²⁷ *Legal Practitioners Act 1995*, section 19 (Conveyancing how prohibited)

²⁸ *Queensland Law Society Act 1952*, section 39 (Persons practising without certificates)

(2) Upon conviction for an offence against this section, the adjudicating court shall order the auctioneer, real estate agent, commercial agent, or motor dealer concerned to refund any excess or improper fees, charges, commission, reward, or remuneration received or retained by the convicted person.

(3) Where any amount is alleged to be payable to an auctioneer, a real estate agent, a commercial agent, or a motor dealer for recouping expenditure lawfully incurred by the person in connection with a service or transaction, then, in proceedings against the person under this section for that the person demanded, received, or retained from money received by the person that amount contrary to this section, the court shall presume that the expenditure in question was not lawfully incurred by the person unless the person proves that it was lawfully incurred and the amount that was lawfully incurred.

Prohibited practices

79.(1) No person shall, whether on commission or for or in expectation of any fee, gain or reward, supply or undertake to supply or advertise or hold out in any manner that the person will supply to any person addresses or other particulars of—

- (a) houses that are to let; or
- (b) houses, land or estates that are for sale;

unless the first person is the holder of a real estate agent's licence and has obtained the consent of the landlord or, as the case may be, the vendor to supply the particulars.

(2) No person shall display photographs of real property for sale on behalf of any other person or supply particulars of that real property (other than in a newspaper within the meaning of the *Printing and Newspapers Act 1981*) unless—

- (a) the person is the holder of a real estate agent's licence; and
- (b) the person is the licensee with whom the property has been listed; and
- (c) it is a condition of the person acting as agent in respect of the

listing that the person is only entitled to commission payable under this Act for so acting.

Prohibition of contracting out

80. Where the fees, charges, commission, reward, or other remuneration which an auctioneer, a real estate agent, a commercial agent, or a motor dealer shall be entitled to receive for or in respect of any service or transaction are prescribed, any covenant, agreement, or condition under which any person agrees to pay or allow to an auctioneer, a real estate agent, a commercial agent, or a motor dealer any amount by way of fees, charges, commission, reward, or other remuneration which is in excess of or not included in the fees, charges, commission, reward, or other remuneration, as the case may be, so prescribed, or under which any person agrees to waive or surrender any right or remedy which the person may have in respect of any such excess or improper fees, charges, commission, reward, or other remuneration received or retained by an auctioneer, a real estate agent, a commercial agent, or a motor dealer or, in any event, any covenant, agreement, or condition under which any person agrees to waive or surrender any right or remedy which the person may have against an auctioneer, a real estate agent, a commercial agent, or a motor dealer under this Act shall be absolutely void and of no effect.

Failure to comply with court order

81.(1) Any auctioneer, real estate agent, commercial agent, or motor dealer who has been ordered by any court to pay to any person any money received by the first person in respect of a sale or other transaction shall, if the first person fails to pay to the person concerned the money so ordered to be paid within the time specified in the order or, if no time is so specified, then within 14 days after the making of the order, be guilty of an offence against this Act.

(2) A conviction for an offence against this section shall not prejudice or affect any right or remedy which any person may have against the offending auctioneer, real estate agent, commercial agent, or motor dealer under any such order as is referred to in subsection (1).

Appointment of substitute licensee**82.(1)** Subject to this section—

- (a) an auctioneer, a real estate agent, a commercial agent, or a motor dealer may, at any time during the currency of the person's licence, appoint in writing as the person's substitute a person approved under this section; and
- (b) whenever an auctioneer, a real estate agent, a commercial agent, or a motor dealer, employed as such by another person, dies or becomes unable, owing to serious illness or other exceptional cause, to carry on duties as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be, for and on behalf of the employer, the employer may at any time during the currency of the employee's licence, appoint in writing as substitute for that employee a person approved under this section; and
- (c) when an auctioneer, a real estate agent, a commercial agent, or a motor dealer (not being employed as such by another person) dies or becomes bankrupt or becomes a patient (within the meaning of the *Mental Health Act 1974*), then—
 - (i) the person's executor or executors; or
 - (ii) where administration of the person's estate has been granted, the person's administrator or administrators; or
 - (iii) in case of intestacy and pending a grant of administration of the person's estate—any person satisfying the registrar that the last person has a sufficient beneficial interest in the estate; or
 - (iv) in case of bankruptcy—the trustee of the person's estate or the official trustee in bankruptcy;

may at any time during the currency of the licence or during the period that, except for the death of the licensee, the licence would have remained current, appoint in writing as substitute for that deceased or bankrupt auctioneer, real estate agent, commercial agent or motor dealer, a person approved under this section.

(2) An appointment of a substitute under subsection (1) shall be lodged with the registrar for approval and the registrar may, if satisfied that the

proposed substitute is fully qualified to hold the licence in question and, in the case of an appointment under either paragraph (b) or (c) of that subsection, that the circumstances justify the appointment, approve of the appointment of the substitute for such period as the registrar may determine but not extending beyond the date when the licence in question would ordinarily expire.

(3) Where the registrar is not satisfied as to the matters referred to in subsection (2), the registrar may and, if so requested in writing by the person who appointed the substitute, shall, refer the appointment to the committee which may, in its absolute discretion, approve or refuse to approve the appointment.

(4) Where the appointment of a substitute is approved under this section then, subject to subsection (6) and subject to the licence remaining in force during the period so approved, the substitute shall, for all the purposes of this Act, be deemed to be the holder of the licence and may act as substitute for the auctioneer, real estate agent, commercial agent, or motor dealer in whose place the substitute has been appointed.

(5) An approval of a substitute under this section may be given subject to such conditions as the registrar or, as the case may be, the committee, deems fit and as are specified in the notification of approval.

(6) An auctioneer, a real estate agent, a commercial agent, or a motor dealer, in whose place a substitute has been appointed under this section, shall not act as an auctioneer, real estate agent, commercial agent, or motor dealer, as the case may be, until the expiration of the period during which the substitute has been appointed to act as such, unless—

- (a) the registrar or, where the approval was given by the committee, the committee, sooner revokes the approval of the substitute; or
- (b) the person who made the appointment has delivered to the registrar a notice in writing that the person desires the appointment terminated as from a date to be specified in the notice;

and upon the happening of either such event the substitute shall cease to act as the auctioneer, real estate agent, commercial agent, or motor dealer, as the case may be, and shall cease to be deemed to be the holder of the licence in question.

(7) The registrar or, where the approval was given by the committee, the committee may at any time revoke the approval of a substitute upon any 1 or more of the grounds upon which a licence may be cancelled under this Act, but this subsection shall not in any way prejudice or affect any power under this Act to cancel the licence.

(8) In any case where the committee deems it desirable and appropriate, it may extend the period for which an appointment of a substitute has been approved under this section and for that purpose, if necessary, may grant a renewal of the licence as though it were still held by the person in whose place the substitute has been appointed.

Death of licensee

83.(1) Where an auctioneer, a real estate agent, a commercial agent, or a motor dealer dies, then—

- (a) the deceased person's executor or executors; or
- (b) where administration of the deceased person's estate has been granted—the deceased person's administrator or administrators; or
- (c) in case of intestacy and pending a grant of administration of the deceased person's estate—any person satisfying the registrar that the last person has a sufficient beneficial interest in the estate;

may, instead of appointing a substitute under section 82, and subject to any express testamentary disposition or direction of the licensee to the contrary, surrender the licence by notice in writing to the registrar.

(2) Where the registrar is satisfied that a licence has been properly surrendered under subsection (1), the registrar shall register the surrender and on the registration the licence shall be terminated as from the date of death of the licensee and the executor, administrator, or other person, as the case may be, shall be entitled, if any fees for the licence have been paid by the deceased licensee out of the deceased licensee's own money, to receive a refund of a part of such fees proportionate to the unexpired portion of the period.

Effect of disqualification on membership of corporation or partnership

84.(1) A person disqualified from holding a licence or certificate of registration under this Act shall not, while the person's disqualification continues, become or continue to be an executive officer of a corporation, or a member of a partnership, carrying on business in the State as an auctioneer, a real estate agent, a commercial agent or a motor dealer.

Maximum penalty—100 penalty units.

(2) A person disqualified, under an order made under part 6, from being an executive officer of a corporation that is the holder of a corporation licence shall not, while the person's disqualification continues, become or continue to be an executive officer of such a corporation.

Maximum penalty—100 penalty units.

Lending licence or certificate of registration

85. No person who is licensed or registered under this Act shall—

- (a) lend or let out on hire the person's licence or, as the case may be, certificate of registration, or notify or advertise that there is available, whether for sale or on loan or on hire or on any other basis, any licence or, as the case may be, certificate of registration, to any other person whether licensed or, as the case may be, registered, or not; or
- (b) permit or allow any other person to hold the other person out as the holder of the licence issued or, as the case may be, certificate of registration issued, to that licensed or registered person.

Maximum penalty—100 penalty units.

Ceasing to be licensed or registered

86. Every person ceases to be licensed or registered under this Act on the expiration or cancellation of the person's licence or, as the case may be, certificate of registration.

Failure to deliver up licence or certificate of registration

87. No person who is the holder of a licence or a certificate of registration under this Act shall, when required under this Act so to do, fail or neglect to deliver up to the registrar the person's licence or, as the case may be, certificate of registration in accordance with that order.

Registered office and address

88.(1) Every person who is the holder of a licence or certificate of registration under this Act shall have a registered office in the State.

(2) The address specified in the application for a licence as the address at which the applicant proposes to carry on business or, in the case of an applicant proposing to carry on business at more than 1 place in the State, the address specified in the application as the applicant's principal place of business in the State shall (subject to a change of registered office notified under subsection (5)), upon the grant, renewal or restoration of the licence be, for the purposes of this Act, the registered office of the licensee.

(3) The address specified in the application for a manager's licence or a certificate of registration as the address at which the person will be employed shall (subject to a change of registered office notified under subsection (5)), upon the grant, renewal, or restoration of the licence or certificate be, for the purposes of this Act, the registered office of that person.

(4) Despite—

- (a)** subsection (2), if a licensee (other than the holder of a manager's licence) is employed as the person in charge of a place of business or of a class of business at a place of business; or
- (b)** subsection (2) or (3), if a licensee (including the holder of a manager's licence) is employed as an auctioneer, a real estate salesperson, a motor salesperson, or a commercial subagent, as the case may be, at a place of business;

at which another licensee carries on business as such, that place of business shall (subject to a change of registered office notified under subsection (5)), for the purposes of this Act, be the registered office of the licensee so employed.

(5) Notice in the approved form of any change in the situation of a registered office shall be lodged by the licensee or, as the case may be, the holder of a certificate of registration within 14 days after the date of such change and the registrar shall note such change in the register of licences or the record of registrations.

(6) Any licensee who carries on business because of a licence without complying with the requirements of this section shall, in addition to any other penalty to which the licensee may be liable under this Act, be liable to a penalty not exceeding half a penalty unit for every day during which the licensee so carries on business.

Publication of name of licensee

89.(1) Every licensee shall paint or affix, and keep painted or affixed, the licensee's name and description as a licensee on the outside of the licensee's registered office and, where the business is carried on at any place other than at such registered office, on the outside of each place in which the licensee's business as a licensee is carried on, in a conspicuous position, in letters clearly legible and conforming to the type and size of type prescribed.

(2) A licensee who carries on business at more than 1 place of business shall, in addition to complying with the requirements of subsection (1), on the outside of each place in which the licensee's business as a licensee is carried on, other than the licensee's registered office, paint or affix, and keep painted and affixed, the name of the licensee in charge at, or each licensee in charge of each class of business carried on at, that place, in a conspicuous position, in letters clearly legible and conforming to the type and size of type prescribed.

(3) A licensee that is the holder of a corporation licence shall, in addition to complying with the requirements of subsections (1) and (2), paint or affix, and keep painted or affixed, the name of the licensee in charge at, or each licensee in charge of each class of business carried on at, the corporation's registered office on the outside of that registered office and in a conspicuous position, and in letters clearly legible and conforming to the type and size of type prescribed.

(4) Where the business of an auctioneer, a real estate agent, a commercial agent, or a motor dealer, is carried on under a business name (within the meaning of the *Business Names Act 1962*) there shall be painted or affixed,

and kept painted or affixed, in addition to that business name, the name of every person carrying on business under that business name, on the outside of each place in which the business is carried on under that business name, and in a conspicuous position, and in letters clearly legible and conforming to the type and size of type prescribed.

(5) No licensee shall publish (whether in a newspaper or otherwise) any advertisement relating to or in connection with the licensee's business as such without specifying in the advertisement such particulars as are prescribed.

(6) Where a licensee carries on business under a name, title or description under a franchising agreement (within the meaning of section 23²⁹), the licensee shall, in any sign (being larger than 1 square metre in area), or in any contract, letter or other document, in connection with the licensee's business, in which appears that name, title or description, ensure that immediately after that name, title or description the licensee's own name and the word 'franchisee' appear in letters that are not less than one-half of the size of, and (so far as their size permits) of the same prominence as, those appearing in that name, title or description.

(7) A person to whom subsection (6) refers may apply to the Minister for exemption from the requirements of subsection (6) and the Minister may refuse any such application or grant it subject to such terms and conditions as the Minister thinks fit.

(8) No person shall—

- (a) contravene this section; or
- (b) keep up or exhibit or allow to remain unobliterated at or near to the person's office, house, or place of business, or exhibit anywhere, any sign, writing, painting, or other mark, implying that such office, house, or place of business is that of a person

²⁹ Section 23 (Franchising agreement)

licensed under this Act, unless the person is the holder of the particular licence so implied.

PART 6—DISCIPLINARY PROCEEDINGS

Interpretation of part

90. In this part—

“corporation” means a corporation that is the holder of a corporation licence and includes a corporation that was the holder of a corporation licence at any time within a period of 3 years immediately before the commencement of disciplinary proceedings against the corporation under this part.

“executive officer” in relation to a corporation includes a person who was an executive officer of the corporation at any time within a period of 3 years immediately before the commencement of disciplinary proceedings against the corporation under this part.

“licensed or registered individual” means an individual who is the holder of a licence or a certificate of registration under this Act and includes an individual who was the holder of a licence or certificate of registration at any time within a period of 3 years immediately before the commencement of disciplinary proceedings against the individual under this part.

Grounds for exercise of disciplinary powers against licensed or registered individual

91. Subject to this part, the committee may exercise any of the disciplinary powers referred to in section 96³⁰ against a licensed or registered individual on 1 or more of the following grounds—

- (a) that, in Queensland or elsewhere, the person has been convicted of an indictable offence or an offence that makes the person unfit

³⁰ Section 96 (Disciplinary powers of committee)

- to be a licensed or registered individual;
- (b) that the person has been convicted of an offence against this Act;
 - (c) that 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) that the person fraudulently or improperly obtained or assisted another person to fraudulently or improperly obtain a licence or certificate of registration;
 - (e) that the person is not a fit and proper person to hold a licence or certificate of registration;
 - (f) that the person has, in carrying on a business in respect of which the person is a licensed or registered individual, been incompetent or acted in an unprofessional manner;
 - (g) that the person is an executive officer of a corporation against which a ground for the exercise of disciplinary power has been made out to the satisfaction of the committee under this part unless the person satisfies the committee that the act or omission relevant to the proceedings against the corporation was done or made without the person's knowledge and that the person could not with reasonable diligence have prevented the doing of the act or the making of the omission;
 - (h) that the person has failed to comply with an order made by the committee under this Act;
 - (i) that the person has failed to comply with a term or condition of the person's licence or certificate of registration.

Grounds for exercise of disciplinary powers against corporation

92. Subject to this part, the committee may exercise any of the disciplinary powers referred to in section 96³¹ against a corporation on 1 or more of the following grounds—

- (a) that the corporation has been convicted in Queensland or elsewhere of an offence that renders it unfit to hold a corporation

³¹ Section 96 (Disciplinary powers of committee)

- licence;
- (b) that the corporation has been convicted of an offence against this Act;
 - (c) that an amount has been paid from the fund because the corporation did, or omitted to do, something that gave rise to the claim against the fund;
 - (d) that the corporation licence held by the corporation was fraudulently obtained;
 - (e) that the corporation is not a fit and proper person to hold a corporation licence;
 - (f) that an executive officer of the corporation is not a fit and proper person to be an executive officer of a corporation;
 - (g) that an executive officer of the corporation is disqualified under this part from being an executive officer of a corporation;
 - (h) that a business carried on by the corporation, under the authority of a corporation licence, has been carried on in an incompetent or unprofessional manner;
 - (i) that the corporation has failed to comply with an order made by the committee under this Act;
 - (j) that the corporation has failed to comply with a term or condition of its corporation licence.

Commencement of disciplinary proceedings

93.(1) The committee may, of its own motion or upon receiving information from the secretary or any other person, direct the secretary to summon a licensed or registered individual or a corporation to show cause why disciplinary action should not be taken against the individual or corporation under section 96.³²

(2) A summons issued under subsection (1) shall require the person summoned to appear at a time (being not less than 14 days after the date of service of the summons) and place specified in the summons and shall be

³² Section 96 (Disciplinary powers of committee)

accompanied by a complaint, signed by the secretary stating—

- (a) the ground or grounds, mentioned in section 91³³ or, as the case may be, 92, in respect of which the person summoned is required to show cause; and
- (b) sufficient particulars to inform the person summoned of the matter of complaint.

Copy of complaint to executive officer

94.(1) If a complaint against a corporation under this part states a ground, mentioned in section 92(f) or (g)³⁴ relating to the conduct of an executive officer, who is not a licensed or registered individual, a copy of the complaint shall be served upon that executive officer, together with a summons requiring the executive officer to appear at the time and place specified for the hearing of the complaint against the corporation.

(2) The copy of the complaint and the summons, referred to in subsection (1), shall be served not less than 14 days before the date on which the hearing of the complaint against the corporation is to take place.

Hearing

95. At the hearing of a complaint under this part—

- (a) the committee may, or if required so to do by a person summoned under section 93 or 94³⁵ shall, order that the hearing take place in public; and
- (b) an individual summoned under section 93 or 94 shall remain in attendance at the hearing unless excused from so doing by the committee; and
- (c) subject to paragraph (b), an individual summoned under section 93 or 94 may be represented at the hearing by counsel or

³³ Section 91 (Grounds for exercise of disciplinary powers against licensed or registered individual)

³⁴ Section 92 (Grounds for exercise of disciplinary powers against corporation)

³⁵ Section 93 (Commencement of disciplinary proceedings) or 94 (Copy of complaint to executive officer)

solicitor; and

- (d) a corporation summoned under section 93 may be represented at the hearing by its counsel, solicitor or duly authorised agent; and
- (e) a barrister, solicitor or other person appointed by the committee may appear to examine or cross-examine witnesses or to otherwise assist the committee; and
- (f) if a person summoned under this part fails to obey the summons, then, upon proof of the due service of the summons, the committee may hear and determine the matter in the absence of the person; and
- (g) if the committee believes that, instead of or in addition to the ground or grounds specified in the complaint, a person summoned should show cause in relation to some other ground or grounds, the person shall, subject to paragraph (h), show cause in relation to the other ground or grounds; and
- (h) before a person is required to show cause under paragraph (g), the committee shall give the person particulars of the other ground or grounds and, if required so to do by the person, shall adjourn the hearing for a period of 7 days or such longer period as the committee may allow.

Disciplinary powers of committee

96. If, upon the hearing of a complaint under this part, the committee is satisfied that a ground referred to in section 91³⁶ or, in the case of proceedings against a corporation, section 92³⁷ is made out it may, in respect of the person summoned, other than an executive officer summoned under section 94, do any 1 or more of the following—

- (a) reprimand the person;
- (b) order that the person pay to the registrar, within such time as is specified in the order, a fine not exceeding 20 penalty units;

³⁶ Section 91 (Grounds for exercise of disciplinary powers against licensed or registered individual)

³⁷ Section 92 (Grounds for exercise of disciplinary powers against corporation)

- (c) order that the person's licence or certificate of registration be suspended for such period as is specified in the order;
- (d) order—
 - (i) if the person is the holder of a licence or certificate of registration at the time the order is made, that the licence or certificate be cancelled; and
 - (ii) whether or not the person is the holder of a licence or certificate of registration at the time the order is made, that the person be disqualified indefinitely, or for such period as is specified in the order, from holding a licence or certificate of registration;
- (e) order, in respect of a licensed or registered individual who is an executive officer of a corporation, that the individual be disqualified indefinitely, or for such period as is specified in the order, from being an executive officer of a corporation that holds a corporation licence;
- (f) impose, amend or revoke such terms and conditions of the licence or certificate of registration of the person as the committee thinks fit;
- (g) make such other order as it thinks fit for the purpose of ensuring that the person observes the provisions of this Act;
- (h) order that the person pay to the registrar, within such time as is specified in the order, such costs of and incidental to the proceedings as the committee thinks fit.

Recovery of fine or costs

97.(1) Any fine imposed or costs required to be paid on order of the committee under section 96 shall be a debt due to Her Majesty and recoverable in any court of competent jurisdiction.

(2) A certificate, that purports to be signed by the secretary, as to the imposition of a fine or order of payment of costs under this part and as to the amount outstanding in respect of the fine or order shall be evidence and, in the absence of evidence to the contrary, conclusive evidence in all proceedings of the matters contained in the certificate.

Disqualification of unlicensed executive officer

98. If, upon the hearing of disciplinary proceedings against a corporation under this part, the committee is satisfied that an executive officer summoned under section 94³⁸ is not a fit and proper person to be an executive officer of a corporation it may order—

- (a) that the executive officer be disqualified from being an executive officer of a corporation that holds a corporation licence indefinitely or for such period as is specified in the order; or
- (b) that the corporation licence of the corporation be suspended until such time as the committee is satisfied that the person, in respect of whom it has made an order under paragraph (a), is no longer an executive officer of the corporation; or
- (c) that the executive officer be disqualified from obtaining a licence or certificate of registration indefinitely or for such period as is specified in the order.

Committee to give reasons

99.(1) The committee shall give written reasons signed by the chairperson or deputy chairperson for any decision made by it to exercise any of the disciplinary powers referred to in section 96 or 98.³⁹

(2) The secretary shall give to any person against whom disciplinary powers are exercised notification of the committee's decision and the reasons given by the committee for making the decision.

Surrender of cancelled licence or certificate of registration

100.(1) If the committee orders, under this part, that the licence or certificate of registration of a person be cancelled, then, upon notification being given by the secretary to that person of the cancellation—

- (a) the licence or certificate shall be of no further force or effect subject to any order of the court upon appeal instituted under

³⁸ Section 94 (Copy of complaint to executive officer)

³⁹ Section 96 (Disciplinary powers of committee) or 98 (Disqualification of unlicensed executive officer)

section 17;⁴⁰ and

- (b) the person shall immediately lodge the licence or certificate with the registrar.

(2) Upon receipt of a licence or certificate of registration under subsection (1), the registrar shall, at the expiration of a period of 30 days after the date on which the secretary gives notification of cancellation under section 99(2), cancel that licence or certificate of registration unless within that period, the licensee or the holder of the certificate institutes an appeal under section 17 against the order of cancellation.

(3) If such an appeal is not proceeded with or if the court confirms the decision of the committee cancelling the licence or certificate of registration, the registrar shall immediately cancel the licence or certificate.

(4) Upon the cancellation of a licence or certificate of registration under subsection (2) the registrar shall record in the register of licences or, as the case may be, in the record of registrations the fact that the licence or certificate has been cancelled and the period for which the person who held the licence or certificate has been disqualified from holding a licence or certificate of registration.

(5) The cancellation of a licence or certificate of registration shall be effectual despite the failure to lodge the licence or certificate with the registrar in accordance with subsection (1)(b).

Suspension of licence or certificate of registration

101.(1) If the committee receives advice of any irregularity or deficiency in a licensee's trust account or, if a receiver is appointed under section 108,⁴¹ the committee may, whether or not disciplinary proceedings have been commenced under this part—

- (a) suspend any licence held by the licensee; or
- (b) suspend any licence or certificate of registration held by an employee of the licensee if it receives advice that the employee is responsible in any way for the irregularity or deficiency in the

⁴⁰ Section 17 (Appeals from committee)

⁴¹ Section 108 (Appointment of auditors)

licensee's trust account;

upon such terms or conditions and for such period as it specifies.

(2) The secretary shall serve notice on the licensee or, as the case may be, the employee of any order of suspension made under subsection (1).

(3) The notice shall be in writing and shall set out the grounds for suspension.

Effect of order of suspension

102.(1) In this section—

“suspension order” means an order made under section 96(c), 98(b) or 101(1).⁴²

(2) A suspension order shall operate from the time notice is served under section 99(2)⁴³ or, as the case may be, section 101(2) and, subject to any order of the court upon appeal under section 17⁴⁴—

- (a) the licence or, as the case may be, the certificate of registration shall be of no force or effect during the period of suspension; and
- (b) the licensee or, as the case may be, the holder of the certificate of registration shall cease to carry on the business or employment in respect of which the person was licensed or registered.

(3) If a suspension order is made, the licensee or, as the case may be, the holder of the certificate shall, within 7 days after notice is served on the person as mentioned in subsection (2), deliver the licence or certificate to the registrar who shall endorse on the licence or certificate the word ‘suspended’ and the period of suspension and shall, subject to any order of the court upon appeal under section 17, retain the licence or certificate until the period of suspension expires.

(4) The suspension of a licence or certificate of registration shall be

⁴² Section 96 (Disciplinary powers of committee), 98 (Disqualification of unlicensed executive officer) or 101 (Suspension of licence or certificate of registration)

⁴³ Section 99 (Committee to give reasons)

⁴⁴ Section 17 (Appeals from committee)

effectual despite the failure to surrender the licence or certificate in accordance with subsection (3).

PART 7—ACCOUNTS AND FUNDS

Division 1—Trust accounts

Exemptions

103.(1) A regulation may exempt a licensee from complying with all or any of the provisions of the division.

(2) This division applies to amounts obtained from the sale of wool only to the extent that a regulation provides that it is to apply.

Application of trust money

104.(1) Subject to section 107,⁴⁵ an auctioneer, a real estate agent, a commercial agent or a motor dealer who receives money in respect of a sale or other transaction must, immediately on receiving the money—

- (a) if paragraph (b) does not apply—pay the money into a general trust account with an approved financial institution; or
- (b) if—
 - (i) the money is received in respect of a sale; and
 - (ii) the sale is to be completed on a day (whether specified in the contract or otherwise ascertainable at the date of the contract) that is more than 60 days after receipt of the money; and
 - (iii) the money is received with a direction that they be invested; pay the money in accordance with the direction into—
 - (iv) a special trust account operated with a financial institution for

⁴⁵ Section 107 (Trust accounts of employers)

Auctioneers and Agents Act 1971

the investment of such money; or

- (v) a separate trust account, opened and maintained with a financial institution solely for the purpose of complying with the direction to invest the money.

(2) Money paid to any trust account under subsection (1) shall be retained in the trust account until disbursed under this Act.

(3) An auctioneer, a real estate agent, a commercial agent, or a motor dealer shall be entitled to draw against a trust account kept under this section in payment of—

- (a) the expenses, commission, and other charges of or incidental to such sale or other transaction; and
- (b) any money owing to the auctioneer, real estate agent, commercial agent, or motor dealer by the person on whose behalf the first person has acted in such sale or other transaction.

(4) However, no amount shall be drawn in respect of commission until payment of the balance of the money (if any) in the trust account has been made under subsection (7) or (8)(a).

(5) A licensee must not pay into a trust account mentioned in subsection (1) any money other than money that is required under that subsection to be paid into that trust account.

(6) Nothing in this section is to be construed to require a licensee, who is the holder of more than 1 licence under this Act, to operate and maintain a general trust account in respect of each licence held by the licensee.

(7) An auctioneer, a real estate agent, a commercial agent, or a motor dealer shall, within 14 days of demand in writing made by the person entitled and, in any event, within 42 days of receipt of money to which a person has become entitled in respect of any sale or other transaction, pay the balance of such money (if any) to the person entitled or as that person may direct in writing.

(8) Where, prior to the making of a payment under subsection (7), an auctioneer, a real estate agent, a commercial agent, or a motor dealer, has received notice in writing from any person who was a party to the sale or other transaction in respect of which the money was received that the ownership of the money is in dispute, the first person shall not make any payment of any such money until such time as—

Auctioneers and Agents Act 1971

- (a) all parties to the sale or transaction notify the person in writing that the dispute has been resolved and inform the person as to the person to whom the money is to be paid, and the first person shall immediately pay the money to that person or as that person may direct in writing; or
- (b) the first person is advised that legal proceedings have been commenced to determine the ownership of the money, and the first person shall immediately pay the money into the court in which those proceedings have been taken, to abide the decision of the court.

(9) If notice under subsection (8)(a) or advice under subsection (8)(b) is not received by the auctioneer, real estate agent, commercial agent or motor dealer within a period of 30 days after receiving notice of the dispute, the person shall, within 7 days after the expiration of that period, forward to all parties to the sale or other transaction a notice advising that—

- (a) at the expiration of a period of 30 days from the date of the notice last mentioned, the person will pay the money to a person (specified in that notice) who the person believes is entitled to the money unless, before the expiration of that period, the person receives notice under subsection (8)(a) or advice under subsection (8)(b); or
- (b) the person is unable to determine who is entitled to the money and is retaining it in the trust account until the person receives notice under subsection (8)(a) or advice under subsection (8)(b).

(10) An auctioneer, a real estate agent, a commercial agent, or a motor dealer shall not draw against or cause any payment to be made from a trust account opened by the person under this section unless drawing or payment is made by or on the person's cheque, crossed and marked across its face 'not negotiable' and, where the cheque is in respect of a payment referred to in subsection (7) or (8), requiring payment to be made to or to the order of the person referred to in subsection (7) or (8), as the case requires, or as such person may direct in writing.

(11) However, a licensee who withdraws any money from a separate trust account operated for the purpose of complying with a direction to invest the money, as mentioned in subsection (1), shall do so by giving the financial institution written authorisation in respect of each such withdrawal.

(12) Where a payment referred to in subsection (7) does not exceed \$10 and an auctioneer—

- (a) has made that payment from the auctioneer's own money; and
- (b) has received an acknowledgement of that payment in writing and signed by the person to whom the sum not exceeding \$10 is payable under or in pursuance of subsection (7);

then, and only then, the auctioneer may recoup that payment by drawing on the auctioneer's cheque against the appropriate trust account.

(13) An auctioneer, a real estate agent, a commercial agent, or a motor dealer, shall, before opening any general trust account or special trust account under this section, notify the registrar in writing of the person's intention so to do, specifying the financial institution and the office or branch of the financial institution in which the person proposes to open the account, and the description of the account, and shall produce to the manager or governing officer of the office or branch of the financial institution concerned evidence that the person has complied with the requirements of this subsection.

(14) An auctioneer, a real estate agent, a commercial agent, or a motor dealer shall, upon opening any general trust account or special trust account under this section, immediately notify the registrar in writing of the opening of the account and shall notify the registrar immediately upon any change of name of such account or upon closing such account.

(15) Money paid, or required to be paid, into a trust account under this section shall not be available for payment of the debt of any other creditor of the auctioneer or, as the case may be, real estate agent, commercial agent, or motor dealer, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such creditor.

(16) Despite anything to the contrary in this Act, the provisions of this Act relating to money received by a motor dealer in respect of transactions entered into by the motor dealer as such, the keeping and audit of accounts in relation to, and the dealing with that money does not apply to money received in respect of such transactions entered into solely on the motor dealer's own behalf and not as an agent for another person.

(17) A person who contravenes this section commits an offence.

Maximum penalty—100 penalty units.

Account of money received and its application

105. An auctioneer, a real estate agent, a commercial agent, or a motor dealer within 14 days of demand in writing made by the person on whose behalf the property was sold or other transaction was carried out, and in any event within 42 days after the completion of the sale or the receipt of any money in respect of any other transaction, shall render to the principal a correct and detailed account in writing of the sale and of all money received on account of the sale and of the application of the money or, in relation to any other transaction, of all such money and of the application of the money.

Wrongful conversion and false accounts

106. An auctioneer, a real estate agent, a commercial agent, or a motor dealer who—

- (a) fraudulently converts to the person's own use any money received by the person, whether from the purchaser or from the principal of the auctioneer, real estate agent, commercial agent, or motor dealer, as the case may be, or from any person on behalf of such principal, in respect of any sale or other transaction, or of any part, or any proposed or contemplated sale or other transaction, or any expenses to be defrayed by the person in respect of any proposed or contemplated sale or other transaction; or
- (b) fraudulently renders any account of any such sale or other transaction or of any money received by the person as mentioned in paragraph (a), or of the application of any such money, knowing the same to be false in any material particular;

shall be guilty of a crime.

Maximum penalty—200 penalty units or 5 years imprisonment.

Trust accounts of employers

107. Wherever a person licensed under this Act as an auctioneer, real estate agent, commercial agent, or motor dealer, is, as such licensee, an employee of another person (being a person who is a licensee), the trust

accounts referred to in section 104 shall be opened and maintained by that employer and all money received by any auctioneer, real estate agent, commercial agent, or motor dealer, in the employ of that employer, and by any other employee of that employer, in relation to any sale or other transaction conducted or carried out on behalf of that employer shall be paid into the general trust account, special trust account or separate trust account, as the case may be, of that employer, and sections 104 to 106⁴⁶ shall be read and construed as if the words ‘an employer of an auctioneer, a real estate agent, a commercial agent, or a motor dealer’ appeared in those sections instead of the words ‘an auctioneer, a real estate agent, a commercial agent, or a motor dealer’ wherever those words appear.

Appointment of auditors

108.(1) Every—

- (a) individual who applies for a licence (other than for the renewal of a licence) under this Act on the individual’s own behalf and not as an employee of any other person, as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, shall forward to the registrar with the application for such licence; and
- (b) corporation that applies for a corporation licence under this Act shall forward to the registrar with its application for such licence;

a notification of the name and address of an approved auditor (the “**auditor**”) who has been appointed by such licensee or applicant to audit the trust accounts kept or to be kept by that licensee or applicant under this Act.

(2) A notification of appointment of an auditor referred to in subsection (1) shall be endorsed by the auditor named in the notification with a statement that the auditor has accepted that appointment or, in the case of an application for a licence, that the auditor will accept that appointment if the application is granted.

(3) If an auditor resigns the appointment or if the licensee terminates the appointment—

⁴⁶ Sections 104 (Application of trust money), 105 (Account of money received and its application) and 106 (Wrongful conversion and false accounts)

- (a) each of them shall immediately notify the registrar of the resignation or, as the case may be, the termination of the appointment, and of the reasons for resigning or terminating the appointment; and
- (b) the licensee shall, within 1 month after the resignation or termination of the appointment takes effect, forward to the registrar a notification (endorsed under subsection (2)) of the name and address of another auditor appointed by the licensee for the purposes of this Act.

(4) In this section—

“approved auditor” means a person who is a member of—

- (a) the Institute of Chartered Accountants in Australia; or
- (b) the Australian Society of Certified Practising Accountants.

Remote localities

109. Despite section 108 the Minister may, in any case where owing to the remoteness of the locality or for other good cause the Minister deems it desirable so to do, approve of the appointment as an auditor of any person the Minister deems competent and in such event the term **“auditor”**, for the purposes of this Act, shall be read and construed as including such a person.

Audit of trust accounts

110.(1) In this section—

“said month” means—

- (a) in respect of a licence granted before the commencement of the *Auctioneers and Agents Act Amendment Act 1972*, the same month in any year as the eighth month after the month in which the licence was first renewed after that commencement; or
- (b) in respect of a licence granted after that commencement, the eighth month after the month in which the licence was granted and the same month in each subsequent year;

or such other month as the registrar may specify by written notice given to

the licensee.

(2) A licensee required under this Act to open and maintain a trust account shall, within 2 months after the last day of the said month in each year, or within such abridged or extended time after that day as the registrar may generally direct by gazette notice (of which every licensee shall be deemed to have notice) or direct in any particular case by written notice given to the licensee—

- (a) cause the licensee's trust account or trust accounts for the whole or, as the case may be, any part of the period of 12 months next immediately preceding the said last day of the said month during which the licensee has been a licensee to be audited by the licensee's auditor; and
- (b) obtain from the licensee's auditor a report of the result of that audit; and
- (c) where the licensee has been a licensee for the full period of 12 months immediately preceding that last day of the said month—obtain from the licensee's auditor a statement that the auditor has, in addition to the audit as referred to in paragraph (a), made 2 unscheduled examinations of the trust account or trust accounts during that period, together with a statement of the result of those examinations; and
- (d) where the licensee has been a licensee for more than 6 months of that period but not for the full period—obtain from the licensee's auditor a statement that the auditor has, in addition to the audit as referred to in paragraph (a), made 1 unscheduled examination of the trust account or trust accounts during that period, together with a statement of the result of that examination; and
- (e) lodge such report and statement with the registrar.

(3) The operations of the Criminal Code, sections 23 and 24⁴⁷ are excluded in respect of a breach, by a licensee, of the duty to lodge a report of the result of the audit of the licensee's trust account or trust accounts with the registrar.

⁴⁷ Criminal Code, sections 23 (Franchising agreement) and 24 (Classes of licences)

(4) Where a licensee is charged with an offence relating to a failure to lodge a report of the result of the audit of the licensee's trust account or trust accounts with the registrar, it is immaterial that the act or omission which constituted the offence occurred without the licensee's authority or contrary to the licensee's instructions.

(5) Where an auditor—

- (a) is unable to certify that a trust account or trust accounts have been properly kept and are in order and correct; or
- (b) upon an unscheduled examination of a trust account or trust accounts is of the opinion that there is some irregularity in relation to the account or accounts that ought to be brought to the notice of the registrar;

the auditor shall advise the registrar accordingly.

(6) Where an auditor is of opinion that, to enable the auditor to determine whether a trust account has been properly kept and is in order and correct, it is necessary or desirable that the auditor should be permitted to examine any other account or accounts of the licensee, the auditor may request the licensee to produce for the auditor's examination such other account or accounts and, in the event of the refusal by the licensee of the auditor's request, the auditor shall immediately advise the registrar accordingly.

(7) When a licensee required under this Act to open and maintain a trust account ceases for any reason to be a licensee under this Act, or ceases to carry on business or act as such, the licensee shall, within 2 months—

- (a) cause the licensee's trust account or trust accounts for the whole of the period from the date up to which the licensee's trust account or trust accounts were last audited under subsection (1) to the date of so ceasing or, where no such audit has been performed, for the whole of the period from the date on which the licensee commenced to act or carry on business as a licensee to the date of so ceasing, to be audited by the licensee's auditor; and
- (b) obtain from the licensee's auditor a report of the result of that audit; and
- (c) lodge such report with the registrar, and shall, unless exempted from so doing by the registrar, in each succeeding year, within 2 months after the day (the "**relevant day**") that is the

anniversary of the day on which the licensee ceased to carry on business or act as a licensee—

- (i) cause the licensee's trust account or trust accounts to be audited by the licensee's auditor for the period of 12 months immediately preceding the relevant day in that year; and
- (ii) obtain from the licensee's auditor a report of the result of that audit; and
- (iii) lodge such report with the registrar.

Inspection, audit etc. by registrar or inspector

111.(1) The registrar, or an inspector, or any person appointed in that behalf by the Minister, may at any time and from time to time require a licensee, a partner of a licensee or any person employed by or apparently employed by a licensee—

- (a) to produce for inspection, or examination, or audit, or inspection and examination and audit by the registrar, inspector or appointed person—
 - (i) all trust accounts and all documents (including all authorities and orders to financial institutions) relating to those trust accounts or such of those trust accounts or documents as the person may specify; or
 - (ii) all books, accounts and records in connection with the licensee's business as a licensee or such of those books, accounts or records as the person may specify; or
 - (iii) all contracts, agreements and other documents relating to any transaction by or with such licensee in connection with the licensee's business as a licensee in the possession, custody, or control of the licensee, or such contracts, agreements, or other documents as the person may specify; or
- (b) to attend before the registrar, inspector or appointed person at a time and place named; or
- (c) to answer any questions or supply any information with respect to any book, account, document, writing, record, contract, or agreement referred to in this subsection or any entry in it.

(2) The registrar, an inspector or the person so appointed by the Minister may require—

- (a) a person who has the possession, custody or control of any book, account, document, writing, record, contract or agreement relating to—
 - (i) a licensee's business as a licensee; or
 - (ii) a transaction in connection with the sale of land by or with a person who is not a licensee;to produce at any time and from time to time that book, account, document, writing, record, contract or agreement for inspection, examination or audit by the registrar, inspector or appointed person; or
- (b) any person to attend before the registrar, inspector or appointed person at a time and place named; or
- (c) the person specified in paragraph (a) or (b) to answer questions or supply information with respect to that book, account, document, writing, record, contract or agreement or with respect to entries in it.

(3) The registrar or an inspector or the person so appointed by the Minister may inspect, or examine, or audit, or inspect and examine and audit, all books, accounts, documents, writings, records, contracts and agreements referred to in subsection (1) or (2), and may take such notes or copies of or extracts from any such book, account, document, writing, record, contract, or agreement, or of any entries in it, as the registrar, inspector or appointed person may deem necessary.

(4) Where the registrar, or an inspector, or the person so appointed by the Minister, deems it necessary to do so for the purpose of obtaining evidence for production in possible subsequent proceedings against any licensee for an offence committed against this Act or any other Act, the registrar, inspector or appointed person may impound or retain any book, account, document, writing, record, contract, or agreement inspected in pursuance of subsection (3) but the person entitled to it shall, instead, be entitled within a reasonable time to a copy certified as correct by the person impounding or retaining it, and such certified copy shall be received in all courts as evidence of and as of equal validity to the original.

(5) Any book, account, document, writing, record, contract, or agreement impounded or retained under subsection (4) may be detained for such period as the person who impounded the same thinks fit and, where any proceedings are commenced for the purpose of which such book, account, document, writing, record, contract, or agreement was impounded or retained, shall be detained until the final determination of those proceedings including any appeal in the matter of those proceedings.

(6) The registrar, or an inspector, or any person appointed in that behalf by the Minister may—

- (a) question any person for the purpose of determining whether this Act has been, or is being, complied with; and
- (b) for the purpose of questioning any person, as authorised by paragraph (a), require that person to attend before the registrar, inspector or appointed person at such times and places as are specified by the person.

(7) A person shall not—

- (a) obstruct, threaten, or intimidate the registrar, an inspector, or any other person in the exercise of powers or functions or in the discharge of duties under this section or attempt so to do; or
- (b) when required under this section to attend before the registrar, an inspector or the person so appointed by the Minister fail without lawful excuse (proof of which shall lie on the person required to attend) to so attend in accordance with such requirement; or
- (c) when required under this section to produce for inspection, or examination, or audit, or inspection and examination and audit any book, account, document, writing, record, contract, or agreement referred to in this section, fail to produce such book, account, document, writing, record, contract, or agreement in accordance with such requirement; or
- (d) when required under this section to answer any question or supply any information give an answer or supply information which is false or misleading, or, knowing or being in a position to know the answer or information required, fail to answer that question or supply that information; or
- (e) retake or attempt to retake any book, account, document, writing,

record, contract, or agreement impounded or retained under the authority of this section.

(8) A person who contravenes this section commits an offence.

Maximum penalty—

- (a) for a first offence—40 penalty units or 6 months imprisonment; or
- (b) for a second or subsequent offence—100 penalty units or 12 months imprisonment.

Minimum penalty for a second or subsequent offence—10 penalty units.

(9) Any requirement under this section may be made verbally, or by writing addressed to the person to or on whom it is made.

(10) In this section—

“**licensee**” includes any person whose licence has expired or has been cancelled or surrendered and any person (not being the holder of an appropriate licence) who acts as, or in relation to whom a justice of the peace is satisfied that the registrar has reasonable grounds for believing that the person acts as, an auctioneer, a real estate agent, a commercial agent or a motor dealer.

“**trust account**” includes any account of or with respect to any money received by a person in respect of any transaction by the person as a licensee.

(11) No person shall be required under this section to answer any question or give any information tending to incriminate the person.

Duties of managers of financial institutions

112.(1) It shall be the duty of the manager or other principal officer of a financial institution with which trust money has been deposited whether to a trust account or any other account—

- (a) to disclose each and every such account to the registrar, or an inspector, or any person appointed by the Minister in any particular case, upon demand in writing delivered to the manager or principal officer personally by any one of those persons, and to permit the registrar or inspector or person appointed by the

Minister, as the case may be, to inspect and make and take away with the person a copy of or extract from each and every such account and of or from any book, account or document relating to any such account; and

- (b) to inform the registrar immediately whenever a trust account (referred to in section 104(1)), of a licensee is overdrawn; and
- (c) to inform the registrar immediately whenever there is insufficient money in a trust account (referred to in section 104(1)) of the licensee to meet a cheque drawn on the account, of the amount of the cheque and the amount in the account.

(2) In this section—

“licensee” includes any person whose licence has expired or has been cancelled or surrendered, or in respect of whom a substitute licensee has been appointed under this Act.

(3) For the purposes of this section the financial institution shall be deemed to be the agent of the licensee and such books, accounts, documents and writings shall be deemed to be the books, accounts, documents and writings of the licensee.

(4) In this section—

“trust money” includes—

- (a) any money that was, or ought, under this Act, to have been, deposited to a trust account (referred to in section 104(1)⁴⁸) of a licensee; and
- (b) any instrument for the payment of any such money where the instrument may be paid into a financial institution, and any security for such money the title to which is transferable by delivery.

Entries in licensee’s books deemed made by licensee

113. Every entry in any book kept by or belonging to any licensee or found in the licensee’s premises shall be deemed, until the contrary is shown, to have been made by or with the authority of the licensee.

⁴⁸ Section 104 (Application of trust money)

Division 2—Auctioneers and agents fidelity guarantee fund**Auctioneers and agents fidelity guarantee fund**

114.(1) There shall be established and kept in the Treasury a fund to be called the auctioneers and agents fidelity guarantee fund (the “**fund**”).

(2) The fund shall consist of—

- (a) all sums paid by way of contribution or levy by licensees under this Act; and
- (b) the interest accruing from the investment of the fund; and
- (c) any other money that may lawfully be paid into the fund.

(3) There shall be paid out of the fund—

- (a) the amount of all claims including any costs established against the fund, and all costs ordered against the committee in respect of an appeal under section 17;⁴⁹ and
- (b) all legal expenses incurred by the committee in performing its functions under this Act; and
- (c) the costs of any inquiry that the committee is empowered to conduct or authorise for the purposes of this Act; and
- (d) all refunds of contributions made to licensees or persons who are the holders of certificates of registration, or to their personal representatives under this Act; and
- (e) all money that the Governor in Council determines is to be paid to the rental bond interest account; and
- (f) any other money payable out of the fund under this Act.

(4) Subject to subsection (5), if at any time—

- (a) the Minister is satisfied that the amount standing to the credit of the fund, allowing for all ascertained and contingent liabilities of the fund, exceeds \$5 000 000, or such greater amount as may be prescribed; and

⁴⁹ Section 17 (Appeals from committee)

- (b) the Minister determines that a part of the fund should be applied to any of the following purposes—
- (i) the payment of expenses incurred or involved in the administration of this Act, including the salaries and wages of the officers and employees appointed under section 16;⁵⁰
 - (ii) the funding of—
 - (A) vocational education and training, and scholarship programs, for auctioneers, real estate agents, real estate salespersons, commercial agents, commercial subagents, motor dealers or motor salespersons; or
 - (B) community education programs relating to the business operations of the persons mentioned in subparagraph (ii)(A); or
 - (C) housing assistance programs; or
 - (D) any program that in the Minister's opinion facilitates the administration of this Act;

the Treasurer is authorised to transfer a sum of money comprising that part of the fund to the consolidated fund.

(5) It is not competent for the Minister to make a determination under subsection (4)(b) if, upon the transfer, the amount standing to the credit of the fund would not exceed \$5 000 000 or, if an amount is prescribed under subsection (4)(a), the prescribed amount.

(6) Money transferred to the consolidated fund under subsection (4) is to be applied to the purpose determined by the Minister under that subsection.

Contributions to fund

115.(1) A contribution to the fund of the amount prescribed shall, subject to this section, be made to the registrar at the times and in the manner prescribed by every licensee other than the holder of a manager's licence.

(2) A licensee shall, in addition to the contribution prescribed in respect of the licensee's own licence, make to the registrar a contribution to the fund

⁵⁰ Section 16 (Registrar and officers)

of the amount prescribed, at the times and in the manner prescribed, in respect of any person employed by the licensee who is the holder of a licence or certificate of registration appropriate to the business carried on by the licensee.

(3) Such contributions shall be in addition to any fees prescribed.

Additional levies

116.(1) If at any time the fund is, in the opinion of the committee, not sufficient to satisfy the liabilities of the committee in relation to the fund, the committee may, with the approval of the Minister, impose on every licensee who has contributed or is liable to contribute to the fund, a levy of such amount as the committee thinks fit but not exceeding \$20 in any 1 year in respect of any 1 licence taken out by a licensee.

(2) The amount of the levy shall become payable on a date and in a manner to be fixed by the committee and notified in the gazette of which every licensee shall be deemed to have notice, and the committee may, in any special case, allow time for the payment of any levy or any part of a levy.

(3) If a licensee does not, after the publication of the notification, pay any levy in accordance with the notification, the registrar shall so report to the committee and, upon the direction of the committee, shall record the fact in the register, and so long as the levy remains unpaid the licensee shall be deemed not to be the holder of a licence under this Act.

Registrar may enter into agreements with financial institutions

117.(1) The registrar may, with the prior approval of the Minister, enter into an agreement, for and on behalf of the State, with a financial institution in respect of the keeping of general trust accounts by licensees.

(2) The registrar may enter into an agreement with a financial institution only if the institution has been prescribed by regulation to be a financial institution to which this section applies.

(3) An agreement entered into under subsection (1) may provide for all or any of the following matters—

(a) the payment of interest on the whole or any part of the amounts

held in licensees' general trust accounts to the fund;

- (b) informing the registrar of amounts held in licensees' general trust accounts;
- (c) the auditing of licensees' general trust accounts;
- (d) any other relevant matter.

(4) It is lawful for a financial institution to pay any amount of interest to the fund in accordance with an agreement entered into under subsection (1).

(5) In this section—

“**licensees**” means auctioneers, real estate agents, commercial agents and motor dealers.

Interest on money in the fund

118.(1) Interest on the money in the fund shall be paid by the Treasurer into the fund.

(2) Interest on the money in the fund shall be calculated on the minimum daily balance at a rate fixed by the Treasurer but not less than the prescribed minimum rate (if any).

Application of fund

119.(1) Subject to this Act, the fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss because of—

- (a) the contravention of any provision of section 60, 69, 70, 72, 73 or 74 or of part 7, division 1⁵¹ by a prescribed person; or
- (b) the contravention of any provision of the *Auctioneers and Agents Act 1971*, section 67 or 67A by a prescribed person before the

⁵¹ Section 60 (Guarantee of title), 69 (Restriction on agents purchasing or selling property), 70 (When agent prohibited from having interest in option to purchase land), 72 (False representations as to property), 73 (Representations as to availability of finance) or 74 (Lands not lawfully usable for residential purposes) or of part 7, division 2 (Trust accounts)

commencement of the *Land Sales Act 1984*, section 4;⁵² or

- (c) the contravention of any provision of the *Land Sales Act 1984* by a vendor's agent who is a prescribed person; or
- (d) the stealing or fraudulent misappropriation or misapplication by a prescribed person of money or other valuable property entrusted to the prescribed person in the course of the business of a licensee as an auctioneer, real estate agent, commercial agent or motor dealer.

(2) In subsection (1)—

“contravention” of section 60,⁵³ includes a failure by a motor dealer to ensure a buyer gains clear title to a motor vehicle at the time of sale as mentioned in section 60(2), even if the motor dealer does not commit an offence against the subsection.

“prescribed person” means a licensee, the licensee's partner, employee, agent or any person having the apparent charge or control for the time being of the office or business of the licensee.

(3) For the purposes of subsection (1) and of any other provision of this part, a reference to a person having the apparent charge or control for the time being of the office or business of a licensee includes a reference to a person appointed under this Act as a substitute for a licensee or deceased or bankrupt licensee.

(4) No claim lies against the fund in respect of the stealing or fraudulent misappropriation or misapplication of money to which section 104(1)(b)⁵⁴ applies.

(5) No person shall have a claim against the fund unless the person notifies the registrar in writing of the substance of the claim within a period of—

- (a) 6 months after the person becomes aware that the person has suffered pecuniary loss; or
- (b) 3 years after the commission of the breach that caused the

⁵² *Land Sales Act 1984*, section 4 (Amendment and citations)

⁵³ Section 60 (Guarantee of title)

⁵⁴ Section 104 (Application of trust money)

person's pecuniary loss;

whichever occurs sooner.

(6) However, if, within the period (mentioned in subsection 5(a) or 5(b)) otherwise applicable to the making of a claim, the claimant commences an action in a court of competent jurisdiction for the recovery of the claimant's pecuniary loss, the claimant may, within a period of 3 months after the action concludes or is terminated, make a claim against the fund by notifying the registrar in writing of the substance of the claim.

(7) For the purposes of this section and sections 120, 121 and 123 to 126—⁵⁵

“licensee” includes a person who carries on the business of an auctioneer, a real estate agent, a motor dealer or a commercial agent and is not the holder of a licence.

(8) A claim shall not be had against the fund by—

- (a) a licensee who suffers pecuniary loss in the course of carrying on business as a licensee; or
- (b) a financier of the business of a motor dealer, or an individual who finances the business of a motor dealer, that or who suffers pecuniary loss because of financing the business of the motor dealer; or
- (c) a corporation or an individual that or who suffers pecuniary loss because of guaranteeing the due performance by a motor dealer of the motor dealer's obligations in respect of financial arrangements made by the motor dealer concerning the motor dealer's business as such.

Claims against the fund

120.(1) Subject to section 119, the committee may receive and settle any claim against the fund at any time after the contravention or commission of the stealing or fraudulent misappropriation or misapplication in respect of

⁵⁵ Sections 120 (Claims against the fund), 121 (Advertisement relating to defaulting licensee and claims), 123 (Proceedings against the committee), 124 (Subrogation), 125 (Directors to compensate fund) and 126 (Committee may require production of documents)

which the claim arose but no person shall be entitled, without the leave of the committee, to commence any action in relation to the fund unless the committee shall have disallowed the person's claim.

(2) No person shall be entitled to recover from the fund an amount greater than the balance of the loss suffered by the person after deducting from the total amount of such loss the amount or value of all money or other benefits received or recovered or which in the opinion of the committee might, but for the person's neglect or default, have been received or recovered by the person from any source other than the fund in reduction of such loss.

(3) A person who makes a claim against the fund must give written notice to the committee if the person receives an amount or benefit (either before or after the claim is finalised) from another source for the same loss.

(4) If a person recovers from the fund more than the person is entitled to recover from the fund under subsection (2) (including an amount the person must notify the committee of under subsection (3))—

- (a) the amount to which the person is not entitled is a debt owing to the fund; and
- (b) the committee may bring a civil action in a court of competent jurisdiction to recover the debt for the fund; and
- (c) the committee must pay any amounts recovered under paragraph (b) to the fund.

(5) The Governor in Council may, by regulation, fix the maximum amount which any person shall be entitled to recover from the fund and, where such an amount is so fixed, no person shall be entitled to recover from the fund any amount in excess of the amount so fixed.

(6) The Governor in Council may, by regulation, fix the aggregate amount which may be applied in the reimbursement of all persons who suffer loss through any contravention or stealing or fraudulent misappropriation or misapplication by the same licensee, partner, employee, agent, or other person, and where such an amount is so fixed, there shall not be paid out of the fund in relation to the contravention as specified in section 119(1) or stealing, or misappropriation or misapplication, any amount in excess of the amount so fixed.

(7) No amount shall be paid or be payable out of the fund as interest on

the amount of any judgment obtained or of any claim allowed against the fund.

Advertisement relating to defaulting licensee and claims

121.(1) Whenever there is in force a regulation under section 120(5), the committee shall cause to be published a notice, in or to the effect of the approved form, in a newspaper published and circulating in the district in which the defaulting licensee was carrying on business and also in a daily newspaper published and circulating in Brisbane, and such notice shall fix a date being not earlier than 3 months after the publication, or the first such publication, as the case may be, within which claims must be made.

(2) Despite section 119(5),⁵⁶ any claim not made in writing on or before the date fixed in the notice published as aforesaid shall be barred unless the committee, in its absolute discretion, otherwise determines.

Distribution from fund

122.(1) The committee shall make, or authorise any person to make, such inquiry into claims against the fund as it may think fit and, subject to section 120(2) to (6),⁵⁷ may—

- (a) where a notice has been published under section 121, at any time after the date fixed by that notice; or
- (b) in all other cases, at any time;

make payment out of the fund of such amounts to such claimants as the committee may determine.

(2) No payment from the fund by the committee under this division made in good faith in the exercise or purported exercise of its powers shall subject the committee or any member to any liability in respect of the payment and the proof of any allegation of the absence of good faith on the part of the committee or any member thereof shall be upon the person so alleging.

⁵⁶ Section 119 (Application of fund)

⁵⁷ Section 120 (Claims against the fund)

Proceedings against the committee

123.(1) Any proceedings brought against the committee in relation to any claim against the fund shall be by action at law as for a debt due by the committee and shall be brought in a court of competent jurisdiction.

(2) In any action referred to in subsection (1) all defences which would have been available to the licensee in relation to whom any claim arose shall be available to the committee and in any such action all questions of costs shall be in the discretion of the court.

(3) No proceedings shall be brought against the committee in relation to any claim against the fund after the expiration of 6 months after the date the registrar has notified the claimant that the committee has disallowed the claim, or such longer period as the court, on sufficient cause being shown may, on such terms as it thinks fit, permit.

Subrogation

124.(1) On payment out of the fund of money in settlement in whole or in part of any claim under this Act, the committee shall be subrogated, to the extent of such payment, to all the rights and remedies of the claimant against the licensee in relation to whom the claim arose, or any other person, and any money recovered by the committee shall be paid into the fund.

(2) The committee may enforce its rights of subrogation in its corporate name.

Directors to compensate fund

125.(1) Where payment is made out of the fund in settlement in whole or in part of any claim relating to the business of an auctioneer, a real estate agent, a commercial agent or a motor dealer carried on by a corporation, the directors of the corporation, at the time when the act or omission (that gave rise to the claim) occurred, shall be jointly and severally liable to compensate the fund in respect of that payment.

(2) In this section—

“**director**” includes—

(a) any person occupying or acting in the position of director of the

corporation, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and

- (b) any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act.

Committee may require production of documents

126. The committee may at any time and from time to time require production and delivery up of securities and documents necessary to support any claim made or for the purpose of exercising its rights against any defaulting licensee and may in default of delivery up of any securities or documents reject any claim.

Insufficiency of fund

127. No money or other property belonging to the committee, other than the fund, shall be available for the satisfaction of any judgment obtained against the committee in relation to the fund, or for the payment of any claim determined by the committee, and where the amount to the credit of the fund is insufficient to pay the whole amount of all claims determined in any financial year, any such claim so far as it remains unpaid shall be charged against future receipts of the fund and shall be paid out of the fund when money is available in the fund.

Freezing of trust accounts and ultimate disposal of trust money of defaulting licensees

128.(1) Wherever it appears to the registrar that a licensee, or the licensee's partner, or any employee of a licensee in the course of employment with such licensee or an agent of such licensee or any other person having the apparent charge or control for the time being of the office or business of such licensee has or may have stolen or fraudulently misappropriated or misapplied any trust money, the registrar may immediately advise in writing the licensee and the manager or principal officer of any office or branch of any financial institution where the licensee has a trust account or other account that no money shall then be drawn from such trust account or other account without the registrar's approval, and where any claim has been made against the fund in relation to any person,

the registrar may further direct that all or any money to the credit of such account shall be paid to the registrar and by the registrar be paid into the fund, and such manager or principal officer shall give effect to all such directions and this section shall be a sufficient authority and indemnity for doing so.

(2) A notice served under subsection (1) shall be signed by the registrar and dated and shall state that the registrar requires the account or accounts specified in the notice to be operated under the registrar's control and a copy of the notice shall be served on any person (other than the licensee concerned) authorised to operate on the account or accounts specified in the notice.

(3) After a notice served under subsection (1) has been served on the manager or other principal officer of the office or branch of a financial institution (as the case may be) and until such notice ceases to be effective, whether or not a copy of such notice has been served on the licensee concerned or on any other person, no payment shall be made by the financial institution on any cheque or other instrument drawn on any account specified in the notice unless it bears (as well as the signature of the licensee or other person authorised to operate on that account) the signature of the registrar or of a person authorised by the registrar (it being declared that the registrar may in writing so authorise any of the registrar's officers or agents).

(4) If that licensee or other person authorised to operate on an account specified in the notice served under subsection (1) is unwilling to operate on the account in conjunction with the registrar or person authorised by the registrar, the registrar or, with the registrar's consent in writing, that authorised person may operate on any such account alone.

(5) A statutory declaration made by the registrar or person authorised by the registrar under subsection (3) and subscribed under the *Oaths Acts 1867* to the effect that the licensee or other person authorised to operate on any account is unwilling to operate on the account in conjunction with the registrar or the person authorised by the registrar shall be sufficient evidence to any officer of the licensee's financial institution of that fact.

(6) After the notice served under subsection (1) has been served on the licensee concerned and until such notice ceases to be effective, that licensee shall not sign any cheque or other instrument drawn on any account specified in the notice unless the cheque or other instrument has first been

signed by the registrar or a person authorised by the registrar.

(7) After a notice served under subsection (1) has been served on any person (other than the licensee concerned) who is authorised to operate on any account specified in the notice and until the notice ceases to be effective, that person shall not sign any cheque or other instrument drawn on any account specified in the notice unless the cheque or other instrument has first been signed by the registrar or a person authorised by the registrar.

(8) Any licensee, or manager or principal officer or other officer of any financial institution, or any person authorised to operate on the account of a licensee (including any licensee who is authorised to operate on the trust account of another licensee) who knowingly contravenes this section shall be guilty of an offence against this Act.

Maximum penalty—100 penalty units.

(9) Any licensee in respect of whose trust account or other account a notice is served under subsection (1) may appeal to a District Court judge who may make such order in the matter as the judge thinks fit.

(10) A notice served under subsection (1) shall cease to be effective—

- (a) if the registrar rescinds the notice, on the date when it is so rescinded (and it is declared that any such notice may be rescinded by the registrar); or
- (b) if a District Court judge on appeal orders that the notice ceases to be effective, on the date specified by the District Court judge as the date on which the notice shall cease to be effective, or, if no date is specified, on the date of the order.

(11) In every case in which any notice ceases to be effective, the registrar shall, as soon as practicable, serve on all persons who have been served with the notice a further written notice that such notice has ceased to be effective.

(12) No financial institution, and no manager or principal officer of a financial institution shall incur any civil liability to any person for dishonouring or failing to make payment of a cheque or other instrument which is drawn on an account in respect of which the registrar has served a notice under subsection (1) and is not signed by the registrar or a person authorised by the registrar, if such dishonour or failure to make payment occurs before the manager or other principal officer who was served with

the notice is served by the registrar with a further written notice that such notice has ceased to be effective.

(13) No act, matter or thing done or undertaken or omitted to be done or undertaken by the registrar or person authorised by the registrar in good faith in the exercise, or purported exercise, of powers under this section shall subject the registrar or person authorised by the registrar under subsection (3) to operate on an account to any liability in respect of doing so and the proof of any allegation of the absence of good faith on the part of the registrar or person authorised by the registrar under subsection (3) to operate on an account shall be upon the person so alleging.

(14) A licensee shall be deemed to operate a trust account or other account if trust money is deposited to that trust account or other account.

(15) In this section—

“**licensee**” includes any person who has been a licensee and, where applicable, the personal representative of a deceased licensee and the trustee of a bankrupt licensee or the official receiver in bankruptcy.

“**trust money**” includes—

- (a) any money that was, or ought, under this Act, to have been, deposited in a trust account required to be opened and maintained by a licensee; and
- (b) any instrument for the payment of any such money where the instrument may be paid into a financial institution, and any security for such money the title to which is transferable by delivery.

Division 3—Receivers

Interpretation

129. In this division—

“**defalcation**” means any stealing, embezzlement, omitting to account, fraudulent misappropriation or misapplication, or other act punishable by imprisonment, of or in relation to money or other property.

“**licensee**” means any person who is or has been a licensee and includes,

where the context so admits or requires, the personal representative of a deceased licensee.

“money” includes any instrument for the payment of money in any case where the instrument may be paid into a financial institution, and any security for money the title to which is transferable by delivery.

“property”, in relation to a licensee, means—

- (a) money or other property which was in the course of or in connection with the business of the licensee or of the business of any partnership of licensees of which the licensee is or has been a partner, entrusted to or received on behalf of any other person by the licensee or partnership or by any of the licensee’s or partnership’s employees or agents or by any licensee with whom the licensee or partnership shares remuneration and which has not been paid or delivered by the licensee or partnership to the person entitled or as that person has directed or otherwise according to law; or
- (b) money or other property which would, were it not for the appointment of a receiver as provided in this division, be receivable on behalf of any other person by the licensee or partnership after the appointment of that receiver; or
- (c) money received by the receiver during a receivership under this division being interest, dividends, or other income arising from any property held by the receiver under this division; or
- (d) ledgers, books of account, vouchers, records, deeds, files and other documents and writings of any description.

Appointment of receiver in certain cases

130. Where the committee is of opinion—

- (a) that any defalcation has been or may have been committed in relation to any trust account of any licensee; or
- (b) that through—
 - (i) the mental or physical infirmity of a licensee; or
 - (ii) the death or bankruptcy or the sequestration or assignment

for the benefit of creditors of the estate of a licensee; or

- (iii) the abandonment of a licensee's business; or
- (iv) a licensee having been disqualified from holding a license; or
- (v) the licence of a licensee having been cancelled or a licensee's application for a renewal of a licence having been refused, or the licensee having been deemed not to be the holder of a licence;

any person is unable to obtain payment or delivery of money or other property held for or on behalf of that person by the licensee or partnership of licensees of which the licensee is or was a partner;

the committee may appoint a receiver of all or any property which is held by the licensee or partnership of licensees of which the licensee is or was a partner or by some other person on the licensee's behalf or is recoverable by the licensee or partnership, or, where the licensee is dead, which because of the licensee's death is or may be recoverable by the licensee's personal representative.

Application for appointment of receiver

131.(1) An application under this division for the appointment of a receiver shall be made in writing to the secretary who shall, unless the committee otherwise directs, summon the licensee to appear before the committee on a date to be fixed and stated in the summons.

(2) Unless in the interests of justice the committee considers it desirable, no person shall be permitted to be present at the hearing of the application except—

- (a) the committee and its officers; and
- (b) the applicant, respondent, and their respective legal representatives; and
- (c) the members of a partnership of licensees of which the respondent is or was a partner; and
- (d) any person while being examined as a witness.

(3) The committee may on the application of any party, or as it thinks fit,

make an order forbidding the publication of any report or account of the evidence or other proceedings on the hearing of the application and any person who contravenes any such order shall be guilty of an offence against this Act.

(4) A copy of the order of the committee appointing a receiver shall, as soon as practicable, be served on the licensee and on any other person to whom the committee directs that notice of the appointment should be given.

Receiver may require delivery of property to receiver

132.(1) The receiver may require any person to give to the receiver such information concerning any property of which the receiver has been appointed receiver as may reasonably be required.

(2) No person so required to give information shall, without lawful justification or excuse (the proof of which shall lie on the person) fail so to do or shall otherwise hinder, obstruct, or delay the receiver in the performance of the receiver's duties or the exercise of powers under this division.

Receiver may forbid withdrawal of money from financial institution

133.(1) Where the receiver has reasonable grounds for believing that there is in any account with a financial institution money received for or on behalf of the licensee or of the partnership of licensees of which the licensee is or was a partner, the receiver may serve on the financial institution concerned a notice in writing with a copy of the order of the committee attached to the notice forbidding, except by the receiver or on the receiver's authority, any withdrawal of money from or any dealing (including in any case the completion of any uncompleted dealing commenced before the service of the notice) with that account, whether the account is in the name of the licensee or the name of a partnership of licensees of which the licensee is or was a partner or, where the licensee is dead, an account which is in that name, or partnership name, or which was formerly in that name or partnership name and is now in the name of the licensee's personal representative.

(2) Without prejudice to any other mode of service, service of any notice under this section may be effected by leaving the notice and copy of the

order attached to the notice with the manager, accountant, or such other person as appears to be at the time of service in charge of the office or branch of the financial institution at which there is an account to which subsection (1) refers.

(3) The financial institution on which the notice is served shall not permit any withdrawal from or dealing with any account to which the notice relates except by or on the authority of the receiver.

(4) The receiver may withdraw all the money in any such account or from time to time withdraw any of the money and pay it into a special account or special accounts in the receiver's own name and may operate on or otherwise deal with the special account or special accounts in accordance with law.

Receiver may take possession of property

134.(1) The receiver may take or enter into possession of any property of which the receiver has been appointed receiver, but all ledgers, books of account, vouchers, records, deeds, files and other documents and writings (other than those relating to property referred to in paragraph (a) or (b) of the definition of "property" in section 129⁵⁸ or to any former business of the licensee) shall, as soon as reasonable, be returned to the licensee.

(2) If the licensee or any other person, on being required by the receiver to transfer or deliver to the receiver or to permit the receiver to take possession of any such property in the licensee's possession or at the licensee's disposition or under the licensee's control, does not comply with the requirement, or if it appears to the receiver that any such person on being thus required has not fully complied with the requirements, the receiver may apply to the Supreme Court for an order of transfer or delivery of the property to the receiver, and that court may make that order.

(3) If it appears to the receiver that an order made by the Supreme Court under subsection (2) is not complied with, the receiver may apply to the Supreme Court for an order authorising any police officer, or the receiver or some other person and police officer, to enter any premises or other place specified in the order and to search for any property of which the receiver is entitled to take possession under this section and to seize any such property

⁵⁸ Section 129 (Interpretation)

and remove it to such place as the receiver thinks fit, and on such application the court may make such order and such further order in the matter as to the court seems fit.

(4) Failure to comply with any order made by the Supreme Court under subsection (2) shall be punishable as a contempt of that court.

Improperly withdrawing money or destroying or concealing property

135. No person shall at any time with intent to defeat the purposes of this division and whether before or after a receiver has been appointed—

- (a) withdraw money from or make any payment out of any account; or
- (b) destroy or conceal or remove from one place to another place or deliver into the possession or place under the control of any other person any property of which a receiver has been or is likely to be appointed.

Power of receivers to deal with property

136.(1) The receiver may deal with any property which the receiver has taken, or entered into possession of under this division in any manner in which the licensee or the partnership of licensees of which the licensee is or was a partner might lawfully have dealt with the property and shall as soon as is reasonably possible and to the extent to which ownership can be established deliver the property to the persons lawfully entitled to the property.

(2) Without restricting or in any way derogating from the powers of the receiver under subsection (1), the receiver may—

- (a) prove, grant, claim and draw a dividend in respect of any debt due to the licensee in connection with any property of which the receiver has been appointed receiver; and
- (b) give receipts for any money received by the receiver, which shall effectually discharge the person paying the money from all responsibility in respect of the application of the money; and
- (c) employ a legal representative or other agent to give advice or take

any proceedings or otherwise act for the receiver in relation to any property of which the receiver has been appointed receiver.

Property claimed by licensee

137.(1) The receiver may give notice to the licensee or any other person that, if the licensee or other person has any claim to any property, the person shall within the time specified in the notice (being not less than 30 days from the giving of the notice) submit to the receiver full particulars of the property claimed and the grounds of the claim.

(2) If such a notice has been given, the receiver may disregard any claim made by the licensee or other person otherwise than in accordance with the terms of the notice.

(3) The licensee shall not be entitled to any payment in respect of or otherwise to enforce any such claim and shall not be entitled except as against a licensee to a lien upon any document or writing held by the receiver unless and until the proper claims of all other claimants are fully satisfied and the expenses of the receivership as defined in section 142⁵⁹ have been paid.

Liens for costs on property held by receiver

138.(1) If the licensee or the partnership of licensees of which the licensee is or was a partner claims a lien for costs on any document, writing, or other property held by the receiver, the receiver may by notice in writing require the licensee or partnership to give to the receiver within a time specified in the notice (being not less than 30 days from the giving of the notice) particulars of all documents, writings and other property on which the licensee claims or the partnership claim a lien together with a detailed itemised account relating to the amount in respect of which each lien is claimed.

(2) If the licensee or partnership fails to comply with any such requirement in respect of any lien claimed by the licensee or partnership the receiver may in dealing with the document, writing, or other property disregard the lien.

⁵⁹ Section 142 (Remuneration of receiver and expenses of receivership)

(3) The receiver may, on receipt of any such itemised account, apply to the committee for a review of the amount in respect of which any lien is claimed and the committee may review the account and certify what, upon review, is found to be a reasonable remuneration by way of fee, charge, commission, reward, or other remuneration for the services done or performed by the licensee or partnership, and such certificate shall be conclusive evidence of the matters certified to in the certificate.

(4) If the licensee or partnership so requests in writing, the receiver shall give to the licensee or partnership or any other person on the licensee's or the partnership's behalf such access to all relevant books and documents as is reasonably necessary to enable the preparation of the itemised account and in such event the time specified in the notice under subsection (1) shall not commence until that access has been given.

Application for termination of appointment of receiver

139.(1) The receiver or the licensee or the partnership of licensees of which the licensee is or was a partner may at any time apply to the committee for an order that the appointment of a receiver be terminated, and the committee may make such an order and may if it thinks fit, appoint another person to be the receiver in the former receiver's place.

(2) If a receiver's appointment is terminated by an order of the committee and another person is appointed to be the receiver in the former receiver's place, the former receiver shall, as soon as the former receiver reasonably may and subject to any directions of the committee, transfer or deliver to the receiver appointed in the former receiver's place all property and any documents, writings and other property which the former receiver holds because of appointment as receiver.

(3) If a receiver's appointment is terminated by an order of the committee and no other person is within 14 days of the termination appointed to be receiver in the former receiver's place, the former receiver may, and upon demand in writing by the licensee or the partnership of licensees of which the licensee is or was a partner shall, as soon as the former receiver reasonably may, and subject to any directions given by the committee and subject, unless the committee shall otherwise determine, to the payment by the licensee or partnership to the committee of the expenses of the receivership, as defined in section 142, transfer or deliver to the

licensee or partnership all property which the former receiver then holds because of appointment as receiver.

Property not dealt with by receiver

140.(1) All money and other property which come into the possession of the receiver in the course of the receivership and which the receiver has not dealt with under this division, other than this section, shall be paid or delivered by the receiver to the committee on and to the extent of a request by the committee for the payment or delivery, but where no such request is made, the money and other property shall be paid or delivered to the licensee or to the partnership of licensees of which the licensee is or was a partner, as the case may require.

(2) Where property is delivered to the committee under subsection (1), the committee shall deal with the property in such manner as it sees fit and, where the property is sold, the proceeds of the sale shall, for the purposes of subsection (3), be deemed to be money paid by the receiver to the committee under subsection (3).

(3) All money paid by the receiver to the committee under subsection (1) shall be paid to the fund to be applied first in the reimbursement to it of any claims paid out of the fund in respect of the licensee or the partnership of licensees of which the licensee is or was a partner, secondly in the satisfaction of or partial satisfaction of claims against the licensee or partnership of licensees of which the licensee is or was a partner to the extent to which they or any of them have not otherwise been fully satisfied, and thirdly in payment of the expenses of the receivership, as defined in section 142.

(4) If after the money has been so applied there remains a surplus of money paid by the receiver to the committee, the surplus shall be paid to the licensee or to the partnership of licensees of which the licensee is or was a partner, as the case may require.

Receiver may invest money in receiver's hands

141.(1) The receiver may invest any money in the receiver's hands in the course of the receivership in any manner in which trustees are for the time being authorised by law to invest funds.

(2) Any income accruing from the investment of any such money and any profit from the sale of any such investment shall be added to and form part of the property of which the receiver has been appointed receiver.

Remuneration of receiver and expenses of receivership

142.(1) All money payable to the receiver as remuneration for the receiver's services, all costs of legal proceedings and other expenses incurred by the receiver in the course of the receivership, and any reimbursement made under section 143 (the "**expenses of the receivership**") shall, to the extent that they have not otherwise been paid to the receiver under this Act, be paid to the receiver by the committee out of the fund.

(2) Any amount paid out of the fund for the expenses of the receivership shall be recoverable by the committee from the licensee as a debt owing by the licensee to the committee in any court of competent jurisdiction.

(3) In default of agreement between the committee and the receiver as to the amount to be paid to the receiver as the receiver's remuneration the Minister may, on application by the committee or the receiver, determine the amount to be so paid.

Claim or charge against receiver may be paid from the fund

143. If any claim or charge is made by any person against the receiver for any act or omission by the receiver or the receiver's servants or agents done or made by the receiver or the receiver's servants or agents in good faith and in the execution or purported execution of the powers conferred or duties imposed on the receiver by or under this division, the committee may reimburse the receiver out of the fund for all or any costs, charges, expenses, or damages which the receiver may have incurred in relation to the claim or charge.

Reopening of agreement as to receiver's remuneration

144. The Minister, on application by the licensee or by any partnership of licensees of which the licensee is or was a partner, may reopen any agreement between the committee and the receiver as to the amount to be

paid to the receiver as the receiver's remuneration, and may determine the amount to be so paid.

Court may review receiver's expenses

145.(1) Where proceedings are taken by the committee under section 142(2)⁶⁰ for the recovery of any amount paid out of the fund for the expenses of the receivership and there is evidence that satisfies the court that the amounts charged for those expenses are excessive, the court may take an account between the committee and the receiver and relieve the licensee from payment of any sum in excess of the sum adjudged by the court to be fairly payable in respect of those expenses and, if any excess has been paid or allowed in account by the committee, the court may order the receiver to repay it.

(2) The court shall have, and may, on the application of the licensee or of any partnership of licensees of which the licensee is or was a partner, exercise the like power as may be exercised under subsection (1) where proceedings are taken for the recovery of any amount paid out of the fund for the expenses of the receivership under section 142, and any court that could have entertained an action under section 142(2) shall have power to entertain any application under this subsection, even though the expenses of the receivership have not been paid to the receiver.

(3) No proceedings to obtain any relief under this section shall be taken after 3 months from the time when the expenses of the receivership have been paid, but the legal personal representative of a deceased licensee may take any such proceedings at any time within 6 months after that time.

Receiver not deemed to be personal representative

146. Where a licensee dies, a receiver in the execution of the receiver's functions under this division shall not be taken to be a personal representative of the licensee.

⁶⁰ Section 142 (Remuneration of receiver and expenses of receivership)

Property held by receiver to be free from execution or attachment

147. Property held by a receiver under this division shall not be levied upon or taken or attached under any judgment.

Returns by receiver

148. Subject to any directions given by the committee, every receiver shall at such times as the committee determines furnish to the committee a report of the receivership containing such information as the committee requires, and upon the conclusion of the receivership shall immediately lodge with the committee, in addition to the receiver's final report, all documents and writings in the receiver's possession or under the receiver's control relating to the receivership, and subject to any order of the committee for their destruction or otherwise, such documents and writings shall be kept in the custody of the committee.

PART 8—PASTORAL HOUSES**Interpretation**

149. In this part—

“licensed pastoral house” means a pastoral house that is the holder of a pastoral house corporation licence issued under this part.

“pastoral house” means a corporation declared under a regulation to be a pastoral house for this part.

“pastoral house auctioneer's licence” means a pastoral house auctioneer's licence issued under this part.

“pastoral house corporation licence” means a pastoral house corporation licence issued under this part.

“pastoral house director's licence” means a pastoral house director's licence issued under this part.

“pastoral house manager's licence” means a pastoral house manager's licence issued under this part.

“rural land” means land other than land situated in any city or town or, in the case of a shire, in any township in the shire.

Pastoral house corporation licence

150.(1) A pastoral house may apply to the committee for a pastoral house corporation licence or for the renewal or restoration of such a licence.

(2) A pastoral house corporation licence or the renewal or restoration of such a licence shall not be granted to a pastoral house—

- (a) unless it has at least 1 working director; and
- (b) unless each working director is the holder of a real estate agent’s licence or a pastoral house director’s licence; and
- (c) unless the person in charge of its principal place of business is a working director; and
- (d) unless a working director or a person who is the holder of a real estate agent’s licence, a manager’s (real estate agency) licence or a pastoral house manager’s licence is in charge of each place of business of the pastoral house other than its principal place of business; and
- (e) if an executive officer of the pastoral house is not a fit and proper person; and
- (f) unless the pastoral house complies with all other requirements of this Act applicable to an application for a corporation licence, or for the renewal or restoration of a corporation licence, other than the requirements mentioned in section 19(3).

(3) In subsection (2)—

“working director” means a working director within the meaning of section 19(4).⁶¹

Licensed pastoral house may act as real estate agent and auctioneer

151. A licensed pastoral house shall be authorised, under its licence—

⁶¹ Section 19 (Corporation licence)

- (a) to carry on the business of a real estate agent restricted to the sale of rural land and livestock; and
- (b) to carry on the business of an auctioneer restricted to—
 - (i) auctioning rural land, livestock and wool; and
 - (ii) conducting not more than 4 auctions of land that is not rural land, in respect of each place of business of the pastoral house in each year; and
 - (iii) auctioning plant, machinery, furniture and other items situated on rural land.

Pastoral house corporation licence deemed to be corporation licence

152. Subject to section 151, a licensed pastoral house shall be deemed to be the holder of a corporation licence granted under this Act and this Act, other than sections 19(3), 26(10) to (13), 28(1), 31 and 115,⁶² shall apply accordingly with all necessary modifications.

Pastoral house director's licence, pastoral house manager's licence and pastoral house auctioneer's licence

153.(1) A director of a pastoral house may apply to the committee for a pastoral house director's licence or for the renewal or restoration of such a licence.

(2) An employee of a pastoral house may apply to the committee for a pastoral house manager's licence or a pastoral house auctioneer's licence or for the renewal or restoration of such a licence.

(3) A pastoral house director's licence, a pastoral house manager's licence or a pastoral house auctioneer's licence, or the renewal or restoration of such a licence, shall not be granted to an applicant who—

- (a) is not resident in Queensland, or within 65 km of the boundary of Queensland; or

⁶² Sections 19 (Corporation licence), 26 (Grant of licence), 28 (Fees for licences), 31 (Certain employees to be registered) and 115 (Contributions to fund)

- (b) is not 21 years of age; or
- (c) is not a person of good fame and character; or
- (d) has not been employed for such period as is prescribed, by a corporation that is, at the time when the applicant makes the application, a pastoral house unless exempted from such requirement by the committee with the approval of the Minister; or
- (e) is not a fit and proper person to hold such a licence.

Holder of pastoral house director's licence may act as real estate agent

154. A director of a licensed pastoral house who is the holder of a pastoral house director's licence shall, in the performance of duties as director, be authorised under that licence to act as a real estate agent in respect of the sale of rural land or livestock.

Pastoral house director's licence deemed to be real estate agent's licence

155. Subject to section 154, a person who is the holder of a pastoral house director's licence shall be deemed to be the holder of a real estate agent's licence granted under this Act and this Act, other than sections 26(10) to (13), 28(1), 45 and 115,⁶³ shall apply accordingly with all necessary modifications.

Holder of pastoral house manager's licence may act as holder of manager's (real estate agency) licence

156. A person employed by a licensed pastoral house who is the holder of a pastoral house manager's licence shall, in the course of the person's employment, be authorised under that licence to act as the holder of a manager's (real estate agency) licence in respect of the sale of rural land and livestock.

⁶³ Sections 26 (Grant of licence), 28 (Fees for licences), 45 (Real estate agents' licences) and 115 (Contributions to fund)

Pastoral house manager's licence deemed to be manager's (real estate agency) licence

157. Subject to section 156, a person who is the holder of a pastoral house manager's licence shall be deemed to be the holder of a manager's (real estate agency) licence granted under this Act and this Act, other than sections 26(10) to (13), 28(1), 45 and 115, shall apply accordingly with all necessary modifications.

Holder of pastoral house auctioneer's licence may act as auctioneer

158. A person employed by a licensed pastoral house who is the holder of a pastoral house auctioneer's licence shall, in the course of the person's employment, be authorised under that licence to act as an auctioneer in respect of any auction of a kind referred to in section 151(b).⁶⁴

Pastoral house auctioneer's licence deemed to be general auctioneer's licence

159. Subject to section 158, a person who is the holder of a pastoral house auctioneer's licence shall be deemed to be the holder of a general auctioneer's licence granted under this Act and this Act, other than sections 26(10) to (13), 28(1), 39 and 115, shall apply accordingly with all necessary modifications.

Licence to be endorsed with name of pastoral house

160. A pastoral house director's licence, a pastoral house manager's licence or a pastoral house auctioneer's licence issued under this part shall be endorsed by the registrar with the name of the licensed pastoral house of which that person is a director or, as the case may be, an employee.

Surrender of licence

161. If a person who is the holder of a pastoral house director's licence, a pastoral house manager's licence or a pastoral house auctioneer's licence

⁶⁴ Section 151 (Licensed pastoral house may act as real estate agent and auctioneer)

ceases to be a director or, as the case may be, an employee of a licensed pastoral house, the name of which is endorsed on the person's licence under section 160, the person shall, within 14 days after ceasing to be a director or, as the case may be, an employee of that pastoral house, surrender the licence to the registrar who shall retain it until it expires unless, before it expires, a licensed pastoral house notifies the registrar under section 166⁶⁵ that the person has become a director of or, as the case may be, has been employed by that pastoral house and, if it does so, the registrar shall endorse the licence accordingly and return it to the person.

Licence holder to act only for pastoral house endorsed on licence

162. A person who is the holder of a pastoral house director's licence, a pastoral house manager's licence or a pastoral house auctioneer's licence shall not exercise any of the functions of a real estate agent or, as the case may be, an auctioneer except in the course of carrying out the person's duties as director or employee of a licensed pastoral house, the name of which is endorsed on the person's licence under section 160 or 161.⁶⁶

Committee may grant licences subject to conditions

163.(1) In granting any licence or renewal or restoration of a licence under this part the committee—

- (a) may grant the licence, or renewal or restoration, without terms and conditions; or
- (b) may, with the approval of the Minister, grant the licence, or renewal or restoration, upon and subject to such terms and conditions as it considers appropriate.

(2) Where a licence is granted or renewed or restored subject to terms and conditions any renewal or restoration, or further renewal or further restoration, of the licence shall, unless the committee with the approval of the Minister directs otherwise, be deemed to be granted under and subject to those terms and conditions.

⁶⁵ Section 166 (Pastoral house to notify registrar)

⁶⁶ Section 160 (Licence to be endorsed with name of pastoral house) or 161 (Surrender of licence)

(3) The committee may at any time, with the approval of the Minister, amend or revoke any terms and conditions of a licence or impose any new term or condition.

Employee may act as real estate salesperson

164. An employee of a licensed pastoral house may, in the course of the employee's employment, despite section 31(1),⁶⁷ act as a real estate salesperson in respect of the sale of rural land or livestock.

Fees and contributions for licences

165.(1) A regulation may prescribe the fees that are payable in respect of an application for—

- (a) a pastoral house corporation licence; and
- (b) a pastoral house director's licence; and
- (c) a pastoral house manager's licence; and
- (d) a pastoral house auctioneer's licence;

or an application for the renewal or restoration of any such licence.

(2) The fees prescribed under subsection (1) shall be paid at the time and in the manner prescribed and, where the time and the manner of payment are not prescribed, shall accompany the application for a licence, or for the renewal or restoration of a licence, in respect of which the fees are payable.

(3) A contribution to the fund of the amount prescribed shall be made to the registrar at the times and in the manner prescribed—

- (a) by every licensed pastoral house and every director of a licensed pastoral house who is the holder of a pastoral house director's licence; and
- (b) by a licensed pastoral house in respect of each of its directors who is the holder of a pastoral house director's licence and each of its employees who is the holder of a pastoral house manager's licence or a pastoral house auctioneer's licence.

⁶⁷ Section 31 (Certain employees to be registered)

Pastoral house to notify registrar

166. A licensed pastoral house shall notify the registrar in writing in the approved form of the name and address of every person who, being the holder of a pastoral house director's licence, a pastoral house manager's licence or a pastoral house auctioneer's licence, becomes or ceases to be a director or, as the case may be, an employee of the pastoral house within 21 days after the person becomes or ceases to be a director or employee of the pastoral house.

PART 9—GENERAL**Proof that a person is or is not licensed**

167. In all proceedings against any person for having acted or carried on business or for having advertised or notified that the person acts or carries on business as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be, without a licence, such person shall, unless the person produces the licence or brings other satisfactory proof of the person having been duly licensed at the time when the offence was alleged to have been committed, be deemed to have been unlicensed.

Civil remedies not affected

168. Nothing in this Act shall affect any civil remedy that any person may have against an auctioneer, a real estate agent, a commercial agent, or a motor dealer in respect of any matter.

Offences by corporations

169. Where any offence against any of the provisions of this Act relating to auctioneers, real estate agents, commercial agents, or motor dealers is committed by a corporation, then, in addition to any penalty to which the corporation is liable for such offence, the chairperson of directors or manager or other governing officer by whatever name called, of such corporation shall be liable to the penalty provided by this Act in respect of

the commission of that offence by an individual unless the defendant proves that the offence was committed without the defendant's knowledge and that the defendant used all due diligence to prevent the commission of the offence.

Offences generally

170.(1) Any person who contravenes any provision of this Act shall be guilty of an offence against this Act and shall be liable, if no specific penalty is prescribed for that offence, to a maximum penalty of 40 penalty units or 6 months imprisonment.

(2) All offences against this Act may be prosecuted, and all fees and contributions to the fund due and payable under this Act may be recovered, in a summary way, under the *Justices Act 1886* upon the complaint of the registrar or of any person authorised by the Minister.

(3) Proceedings for an offence against this Act (other than proceedings for an offence against section 106⁶⁸ which may be instituted at any time) may be instituted at any time within 12 months after the commission of the offence, or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever is the later.

(4) All penalties and fees other than contributions to the fund recovered under this Act shall be paid to the consolidated fund, but where it is proved to the satisfaction of the adjudicating court that any person has sustained loss or damage because of the act or default of the defendant which constitutes the offence and that loss or damage has not been compensated for by payment out of the fund, the court may award to that person such part of the penalty imposed as it thinks fit by way of compensation for such loss or damage.

(5) All contributions to the fund recovered under this Act shall be paid to the fund.

(6) All licence and registration fees shall be paid to the consolidated fund.

⁶⁸ Section 106 (Wrongful conversion and false accounts)

Service of documents

171.(1) Subject to this Act, where any notice, complaint, summons or other document is to be given to any person under or for the purposes of this Act it shall be taken—

- (a) that the notice, complaint, summons or other document has been duly given to that person upon evidence that the same has been sent by certified mail to or left at the address last known to the person by whom the same was sent or left as the place of residence or registered office or other place of business of that person; and
- (b) that the notice, complaint, summons or other document (if sent by certified mail) was received by the addressee at the time when the certified mail would have been delivered at the address to which it was sent in the ordinary course of post.

(2) Where service is to be effected on a body corporate, it may be effected on any person who is concerned or takes part in the management of the body corporate, or on the secretary of the body corporate, or on any person who is apparently in charge of any premises in or from which the business of the body corporate is conducted and service so effected shall be deemed to be service on the body corporate.

References to repealed Act

172. A reference in an Act or document to the *Auctioneers and Commission Agents Act 1922* or the *Auctioneers, Real Estate Agents, Debt Collectors and Motor Dealers Act 1922* is taken to be a reference to this Act.

Approval of forms

173. The chief executive may approve forms for use under this Act.

Regulation making power

174.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made for or about the following matters—

Auctioneers and Agents Act 1971

- (a) regulating the appointment of members of the committee, and the proceedings of the committee;
- (b) regulating the duties of the registrar, deputy registrar, secretary, assistant registrars, inspectors and other officers;
- (d) prescribing the procedure to be followed on applications to the committee;
- (e) regulating the contents of applications for licences and certificates of registration under this Act, and the procedure to be followed in respect of such applications;
- (f) prescribing the educational or other qualifications required by applicants for licences or for certificates of registration under this Act;
- (g) regulating the transfer of licences;
- (h) regulating the manner of registration of licences, certificates of registration, renewals, cancellations, restorations, or any other matters requiring registration under this Act;
- (i) prescribing the manner of keeping the register and the record of registrations;
- (j) prescribing the fees payable by applicants for licences or certificates of registration and the renewal, or replacement, or transfer of licences or certificate of registration, the period in respect of which any such fee is payable and the time for and manner of payment;
- (k) prescribing the fees, charges, commission, reward, or other remuneration that auctioneers, real estate agents, commercial agents, or motor dealers shall be entitled to receive for or in respect of the services or transactions carried out by them, and the maximum amount of them, which fees, charges, commission, reward, or other remuneration may be uniform for or in respect of all parts of the State or for or in respect of all services or transactions of an auctioneer, a real estate agent, a commercial agent, or a motor dealer, or may vary for or in respect of different parts of the State or for or in respect of different services or transactions or classes of services or transactions;
- (l) prescribing the amount of contributions to be made to the fund by

licensees;

- (m) prescribing the books, accounts, and records to be kept by licensees, and the form and manner of keeping same, and the exemption by the registrar from keeping any prescribed book, account, or record of any licensee who in the opinion of the registrar keeps books, accounts, or records, as the case may be, sufficient for the purposes of this Act, and the revocation by the registrar of any such exemption;
- (n) with respect to all or any of the following matters—
 - (i) providing for the audit of trust accounts and, if necessary, business and other accounts of licensees or specified classes of licensees, and for the furnishing of a report of the result of any auditor's examination or audit;
 - (ii) requiring the production to an auditor by the licensee, the licensee's servants and agents, or by the manager of any financial institution of books, papers, and accounts relating to the business of a licensee, subject to prescribed conditions;
 - (iii) prescribing the persons to whom the reports of auditors shall be sent for inspection, information, or record;
 - (iv) providing that an auditor shall be subject to an obligation not to divulge, otherwise than as prescribed, any matter of which the auditor shall be informed in the course of an audit;
 - (v) prescribing a scale of fees to be paid for an audit;
 - (vi) prescribing that in the absence of any agreement in writing to the contrary audit fees shall be paid by the licensee;
- (o) fees for inspection of the register and record of registrations and for the making and supply of any copy or extract;
- (p) the furnishing by licensees of returns setting forth particulars of transactions carried out by them, including copies of all sale notes in respect of the sale of real property during any period and the inspection of such returns by any person duly authorised by the Minister;
- (q) imposing penalties not exceeding 10 penalty units for breaches of

a regulation, and in addition for the cancellation of a licence in respect of the second and subsequent offence against this Act;

- (r) all such observances as are not specifically provided for in this Act, and which the Governor in Council considers it desirable that auctioneers, real estate agents, commercial agents or motor dealers should comply with in exercising or carrying out their business.

ENDNOTES**1 Index to endnotes**

	Page
2 Date to which amendments incorporated	152
3 Key	153
4 Table of earlier reprints	153
5 Tables in earlier reprints	154
6 List of legislation	154
7 List of annotations	157
8 Table of renumbered provisions	170
9 Transitional and savings provisions	177

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 10 November 1997. Future amendments of the Auctioneers and Agents Act 1971 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

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 12 of 1992	1 October 1992
2	to Act No. 82 of 1993	13 January 1994
3	to Act No. 58 of 1995	21 December 1995
3A	to Act No. 40 of 1997	19 September 1997

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	3
Changed names and titles	3
Corrected minor errors	2, 3
Obsolete and redundant provisions	3
Renumbered provisions	2, 3

6 List of legislation

Auctioneers and Agents Act 1971 No. 30

date of assent 27 April 1971

pts 1–2 commenced 1 September 1971 (proc pubd gaz 7 August 1971 p 1874)

ss 17(1)–(2), 131–132 commenced 1 February 1972 (proc pubd gaz 29 January 1972 p 505)

s 57 commenced 1 February 1973 (proc pubd gaz 27 January 1973 p 355)

s 58 never proclaimed into force and rep 1972 No. 36 s 32

s 67 never proclaimed into force and sub 1972 No. 36 s 34

remaining provisions commenced 28 February 1972 (proc pubd gaz 29 January 1972 p 505)

as amended by—

Auctioneers and Agents Act and Another Act Amendment Act 1972 No. 36 pt 2

date of assent 21 December 1972

s 34 commenced 1 February 1973 (proc pubd gaz 27 January 1973 p 355)

remaining provisions commenced on date of assent

Age of Majority Act 1974 No. 57 s 8 sch

date of assent 27 September 1974

commenced 1 March 1975 (proc pubd gaz 16 November 1974 p 1083)

Auctioneers and Agents Act Amendment Act 1975 No. 82

date of assent 16 December 1975

s 17 commenced 1 April 1978 (see s 2(2))

remaining provisions commenced 1 January 1976 (proc pubd gaz 20 December 1975 p 1574)

Auctioneers and Agents Act Amendment Act 1977 No. 46

date of assent 3 October 1977

commenced on date of assent

Trust Accounts Act and Another Act Amendment Act 1978 No. 70 pt 3

date of assent 8 December 1978

commenced on date of assent

Building Units and Group Titles Act 1980 No. 42 s 4(2) sch 1 pt 2

date of assent 6 June 1980

commenced 3 November 1980 (proc pubd gaz 25 October 1980 p 953)

Auctioneers and Agents Act Amendment Act 1981 No. 26

date of assent 20 May 1981

commenced on date of assent

Companies (Consequential Amendments) Act 1981 No. 111 pt 6 sch

date of assent 16 December 1981

commenced 1 July 1982 (see s 2(4) and proc pubd gaz 29 June 1982 p 2102)

Land Sales Act 1984 No. 41 s 4 sch (as amd 1985 No. 43 ss 4, 21)

date of assent 9 May 1984

commenced 1 July 1985 (proc pubd gaz 25 May 1985 p 878)

Auctioneers and Agents Act Amendment Act 1985 No. 94

date of assent 13 December 1985

ss 1–2 commenced on date of assent (see s 2(1))

s 64(d) commenced 1 January 1987 (see s 2(2))

remaining provisions commenced 1 May 1986 (proc pubd gaz 26 April 1986 p 2096)

Auctioneers and Agents Act Amendment Act 1988 No. 22 (as amd 1988 No. 88 s 3 sch 1)

date of assent 11 April 1988

ss 1–2 commenced on date of assent (see s 2(1))

ss 6, 22, 24–27, 31(a)–(b), 36–38, 42–43 commenced 1 July 1988 (proc pubd gaz 25 June 1988 p 2441)

remaining provisions never proclaimed into force and rep 1994 No. 87 s 4(1) sch 7

Corrective Services (Consequential Amendments) Act 1988 No. 88 s 3 sch 1

date of assent 1 December 1988

commenced 15 December 1988 (see s 2(2) and o in c pubd gaz 10 December 1988 p 1675)

Rental Bond Act 1989 No. 19 s 57

date of assent 6 April 1989

commenced 1 May 1989 (proc pubd gaz 29 April 1989 p 2803)

Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 6

date of assent 14 November 1990

commenced on date of assent

Public Accountants Registration (Repeal and Consequential Amendments) Act 1990 No. 85 s 5 sch 2

date of assent 29 November 1990

commenced 1 January 1991 (see s 2(3))

Auctioneers and Agents Amendment Act 1991 No. 41

date of assent 5 August 1991

ss 1–2, 8 commenced on date of assent (see s 2(1))

remaining provisions commenced 2 March 1992 (1992 SL No. 21)

South Bank Corporation Amendment Act 1991 No. 67 ss 1–2, 29 sch 2 pt 1

date of assent 24 October 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 5 June 1992 (1992 SL No. 113)

Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 2

date of assent 17 December 1991

commenced on date of assent (see s 2)

Queensland Office of Financial Supervision Act 1992 No. 12 ss 1–2, 66 sch

date of assent 6 May 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 29 May 1992 (1992 SL No. 109)

Consumer Law (Miscellaneous Provisions) Act 1993 No. 82 pts 1–2, sch 1

date of assent 17 December 1993

s 8 commenced 22 June 1995 (see s 2(1) and 1995 SL No. 192)

remaining provisions commenced on date of assent

Building Units and Group Titles Act 1994 No. 69 ss 1–2, 229 sch 2

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions never proclaimed into force and rep 1995 No. 58 s 5(1)
sch 7

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 ss 1–3 sch 2

date of assent 1 December 1994

commenced on date of assent

Consumer Law (Miscellaneous Provisions) Act 1995 No. 1 pts 1–2, sch 1

date of assent 3 March 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 17 April 1995 (1995 SL No. 89)

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1 (as amd 1995 No. 58 ss 1–2, 4 sch 1)

date of assent 28 November 1995

commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995

s 4 sch 1 amdt 6 commenced 28 November 1995 (see s 2(1) sch 1)

remaining provisions commenced on date of assent

Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997 No. 17 ss 1–2 pt 2

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

Land Sales and Land Title Amendment Act 1997 No. 40 ss 1–2 sch

date of assent 25 August 1997

commenced on date of assent

7 List of annotations

This reprint has been renumbered—see table of renumbered provisions in endnote 8

Long title amd 1988 No. 22 s 3 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Definitions

prov hdg sub 1995 No. 57 s 4 sch 1

s 2 prev s 2 om 1995 No. 57 s 4 sch 1
pres s 2 amd 1972 No. 36 s 4(d); 1985 No. 94 s 5(b), (c); 1990 No. 80 s 3 sch 6; 1991 No. 97 s 3 sch 2

def **“approved bank”** ins 1991 No. 41 s 4
om 1993 No. 82 s 6(1)

def **“approved financial institution”** ins 1993 No. 82 s 6(2)

def **“approved form”** ins 1995 Act No. 57 s 4 sch 1

def **“bank”** ins 1991 No. 41 s 4
om 1993 No. 82 s 6(1)

def **“Body Corporate Manager”** ins 1988 No. 22 s 5 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

def **“building society”** ins 1992 No. 12 s 66 sch
om 1993 No. 82 s 6(1)

def **“business of letting”** ins 1995 Act No. 57 s 4 sch 1

def **“certificate of registration”** ins 1975 No. 82 s 4(a)

def **“commercial agent”** amd 1972 No. 36 s 4(a); 1975 No. 82 s 4(b); 1981 No. 26 s 2; 1985 No. 94 s 5(a)(i); 1991 No. 97 s 3 sch 2; 1997 No. 17 s 6(1)

def **“court”** amd 1991 No. 97 s 3 sch 2

def **“credit society”** om 1992 No. 12 s 66 sch

def **“credit union”** ins 1992 No. 12 s 66 sch
om 1993 No. 82 s 6(1)

def **“deputy registrar”** amd 1985 No. 94 s 5(a)(ii); amd 1995 No. 57 s 4 sch 1

def **“Director-General”** ins 1990 No. 85 s 5 sch 2
om 1995 No. 57 s 4 sch 1

def **“executive officer”** ins 1985 No. 94 s 5(a)(iii)

def **“financier”** ins 1972 No. 36 s 4(b)

def **“individual”** om 1991 No. 97 s 3 sch 2

def **“land”** sub 1980 No. 42 s 4(2)(a) sch 1 pt 2; 1984 No. 41 s 4 sch (amd 1985 No. 43 s 21(a))
amd 1991 No. 67 s 29 sch 2 pt 1 cl 2; 1991 No. 97 s 3 sch 2; 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5 sch 4)

def **“letting”** amd 1995 No. 57 s 4 sch 1
 def **“Minister”** sub 1990 No. 80 s 3 sch 6
 om 1991 No. 97 s 3 sch 2
 def **“motor dealer”** amd 1972 No. 36 s 4(c); 1997 No. 17 s 6(2)
 def **“motor vehicle”** amd 1985 No. 94 s 5(a)(iv)
 def **“person”** om 1991 No. 97 s 3 sch 2
 def **“property”** om 1991 No. 97 s 3 sch 2
 def **“real estate agent”** amd 1997 No. 17 s 6(3)
 def **“registrar”** amd 1985 No. 94 s 5(a)(v)
 def **“rental bond interest account”** sub 1995 No. 57 s 4 sch 1
 def **“secretary”** amd 1985 No. 94 s 5(a)(vi)
 def **“security interest certificate”** ins 1995 No. 1 s 6
 def **“used motor vehicle”** amd 1995 No. 57 s 4 sch 1

- (2), (2A) amd 1995 No. 57 s 4 sch 1
 renum as s 5A 1995 No. 57 s 4 sch 1
 (3) renum as s 5B 1995 No. 57 s 4 sch 1
 (4) amd 1995 No. 57 s 4 sch 1
 renum as s 5C 1995 No. 57 s 4 sch 1
 (5) renum as s 5D 1995 No. 57 s 4 sch 1

Application of provisions about auctioneers and auctions

prov hdg ins 1995 No. 57 s 4 sch 1
s 3 prev s 3 om 1991 No. 97 s 3 sch 2
 pres s 3 (prev s 5(2) and (2A)) renum 1995 No. 57 s 4 sch 1

Application of provisions about real estate agents, commercial agents and motor dealers

prov hdg ins 1995 No. 57 s 4 sch 1
s 4 prev s 4 om 1991 No. 97 s 3 sch 2
 pres s 4 (prev s 5(3)) renum 1995 No. 57 s 4 sch 1

Exemptions

s 4A ins 1975 No. 82 s 3
 om 1995 No. 57 s 4 sch 1

Effect of Act on certain other laws

prov hdg ins 1995 No. 57 s 4 sch 1
s 5 (prev s 5(4)) renum 1995 No. 57 s 4 sch 1

Surrender of licence not cancellation

prov hdg ins 1995 No. 57 s 4 sch 1
s 6 (prev s 5(5)) renum 1995 No. 57 s 4 sch 1

Exemptions

s 7 ins 1995 No. 57 s 4 sch 1

Auctioneers and agents committee

s 8 amd 1975 No. 82 s 5(1); 1985 No. 94 s 6; 1991 No. 97 s 3 sch 2; 1993
 No. 82 s 7; 1995 No. 57 s 4 sch 1

Vacation of office

s 9 amd 1975 No. 82 s 6; 1991 No. 97 s 3 sch 2

Meetings

s 11 amd 1985 No. 94 s 7

Taking evidence

s 12 amd 1991 No. 97 s 3 sch 2

Validity of acts

s 12A ins 1985 No. 94 s 8
om 1995 No. 57 s 4 sch 1

Subcommittees

s 14 amd 1972 No. 36 s 5; 1985 No. 94 s 8

Exclusion of liability

s 15 ins 1985 No. 94 s 8

Registrar and officers

s 16 amd 1985 No. 94 s 9; R1 (see RA s 37)

Appeals from committee

s 17 ins 1972 No. 36 s 6
amd 1975 No. 82 s 7; 1985 No. 94 s 10; 1988 No. 22 s 6; 1995 No. 57 s 4
sch 1

No person to act without a licence

s 18 sub 1985 No. 94 s 11
amd 1972 No. 36 s 7; 1977 No. 46 s 2; 1981 No. 111 s 23 sch; 1988 No. 22
s 7 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7);
1991 No. 97 s 3 sch 2

Corporation licence

s 19 ins 1985 No. 94 s 11
amd 1988 No. 22 s 8 (never proclaimed into force and om 1994 No. 87
s 4(1) sch 7); 1991 No. 97 s 3 sch 2; 1995 No. 1 s 3 sch 1; 1995 No. 57
s 4 sch 1

Person deemed to act as licensee

s 20 prev s 20 om 1985 No. 94 s 18
pres s 20 ins 1985 No. 94 s 11
amd 1988 No. 22 s 9 (never proclaimed into force and om 1994 No. 87
s 4(1) sch 7)

Licensee to be in charge of principal place of business

s 21 ins 1985 No. 94 s 11
amd 1988 No. 22 s 10 (never proclaimed into force and om 1994 No. 87
s 4(1) sch 7)

Each separate place of business to be in the charge of licensee or licensed manager

s 22 prev s 22 amd 1972 No. 36 s 13
om 1985 No. 94 s 20
pres s 22 amd 1972 No. 36 s 8; 1974 No. 57 s 8 sch; 1985 No. 94 s 12;
1988 No. 22 s 11 (never proclaimed into force and om 1994 No. 87
s 4(1) sch 7); 1991 No. 97 s 3 sch 2; 1995 No. 57 s 4 sch 1

Suspension of licence by committee

s 22A ins 1975 No. 82 s 9
om 1985 No. 94 s 21

Franchising agreement

s 23 ins 1985 No. 94 s 13
amd R1 (see RA s 37); 1995 No. 57 s 4 sch 1

Classes of licences

s 24 prev s 24 amd 1972 No. 36 s 14
om 1985 No. 94 s 23
new s 24 ins 1988 No. 22 s 15 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)
pres s 24 amd 1975 No. 82 s 8; 1985 No. 94 s 14; 1988 No. 22 s 12 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7); 1993 No. 82 s 8; 1995 No. 57 s 4 sch 1; 1995 No. 58 s 4 sch 1

Application for licence

s 25 amd 1985 No. 94 s 15; 1988 No. 22 s 13 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7); 1991 No. 97 s 3 sch 2; 1995 No. 57 s 4 sch 1

Grant of licence

s 26 amd 1972 No. 36 s 11(b); 1985 No. 94 s 16; 1991 No. 97 s 3 sch 2; 1995 No. 57 s 4 sch 1

Restoration of licence

s 27 amd 1985 No. 94 s 17

Fees for licences

s 28 amd 1972 No. 36 s 12; 1985 No. 94 s 19; 1988 No. 22 s 14(a), (c) (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7); 1991 No. 97 s 3 sch 2

Cancellation of licences generally

s 29 prev s 29 om 1972 No. 36 s 18
pres 29 amd 1975 No. 82 s 10; 1985 No. 94 s 22; 1991 No. 97 s 3 sch 2;
1995 No. 58 s 4 sch 1

Register

s 30 amd 1985 No. 94 s 24(a), 25(b); 1995 No. 1 s 3 sch 1; 1995 No. 57 s 4 sch 1

Certain employees to be registered

s 31 amd 1985 No. 94 s 25

Suspension of certificate of registration by committee

s 31A ins 1975 No. 82 s 13
om 1985 No. 94 s 31

Application for registration

s 32 amd 1985 No. 94 s 26; 1991 No. 97 s 3 sch 2; 1995 No. 57 s 4 sch 1

Grant of registration

s 33 amd 1972 No. 36 s 17; 1975 No. 82 s 11; 1985 No. 94 s 27; 1991 No. 97 s 3 sch 2; 1995 No. 1 s 3 sch 1; 1995 No. 57 s 4 sch 1

Restoration of certificate

s 34 ins 1985 No. 94 s 28
amd 1995 No. 57 s 4 sch 1

Fees

s 35 amd 1972 No. 36 s 19; 1975 No. 82 s 12; 1985 No. 94 s 29

Cancellation of registration generally

s 36 sub 1985 No. 94 s 30
amd 1972 No. 36 s 20

Record of registration

s 37 prev s 37 om 1972 No. 36 s 24
pres s 37 amd 1985 No. 94 s 32; 1995 No. 57 s 4 sch 1

Restriction on employment of certain other persons

s 38 amd 1985 No. 94 s 33; 1991 No. 97 s 3 sch 2; 1995 No. 57 s 4 sch 1

PART 5—AUCTIONEERS, REAL ESTATE AGENTS, COMMERCIAL AGENTS AND MOTOR DEALERS

pt hdg sub 1988 No. 22 s 16 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

General auctioneers' licences

s 39 amd 1972 No. 36 s 21; 1974 No. 57 s 8 sch; 1985 No. 94 s 34; 1991 No. 97 s 3 sch 2; 1995 No. 58 s 4 sch 1

Provisional auctioneers' licences

s 40 amd 1972 No. 36 s 22; 1974 No. 57 s 8 sch; 1985 No. 94 s 35; 1991 No. 97 s 3 sch 2

Restricted auctioneers' licences

s 41 prev s 41 om 1995 No. 1 s 3 sch 1
pres s 41 amd 1972 No. 36 s 23; 1974 No. 57 s 8 sch; 1985 No. 94 s 36; 1991 No. 97 s 3 sch 2; 1995 No. 58 s 4 sch 1

Reciprocity in grant of licences

s 42A ins 1972 No. 36 s 26
om 1985 No. 94 s 38

Sole agencies and multiple listings

s 43 amd 1972 No. 36 s 27
om 1975 No. 82 s 14

Code of professional conduct of auctioneers

s 44 amd 1995 No. 57 s 4 sch 1

Real estate agents' licences

s 45 amd 1972 No. 36 s 25(a); 1974 No. 57 s 8 sch; 1985 No. 94 s 37; 1988 No. 22 s 17 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7); 1991 No. 67 s 29 sch 2 pt 1 cl 3; 1991 No. 97 s 3 sch 2; 1994

No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5 sch 4); 1997 No. 28 s 295 sch 3

Sole agencies, multiple listings etc.

s 46 ins 1985 No. 94 s 39
amd 1995 No. 57 s 4 sch 1

Bogus advertisements

s 47 sub 1985 No. 94 s 40
amd 1995 No. 57 s 4 sch 1

Code of professional conduct of real estate agents

s 48 amd 1995 No. 57 s 4 sch 1

Commercial agents' licences

s 49 amd 1972 No. 36 s 28; 1974 No. 57 s 8 sch; 1985 No. 94 s 41; 1991 No. 97 s 3 sch 2

Licence not to confer additional powers

s 50 amd 1985 No. 94 s 42

Production of licences etc.

s 51 prev s 51 om 1972 No. 36 s 29
pres s 51 amd 1985 No. 94 s 43

Falsely pretending to be a commercial agent

s 54 ins 1985 No. 94 s 44
amd 1995 No. 57 s 4 sch 1

Code of professional conduct of commercial agents

s 56 amd 1995 No. 57 s 4 sch 1

Motor dealers' licences

s 57 amd 1972 No. 36 s 30; 1974 No. 57 s 8 sch; 1985 No. 94 s 45; 1991 No. 97 s 3 sch 2

Register to be kept by licensees

s 58 prev s 58 om 1972 No. 36 s 32
pres s 58 amd 1985 No. 94 s 46; 1995 No. 57 s 4 sch 1

Inspection of used motor vehicles

s 59 amd 1985 No. 94 s 47

Guarantee of title

s 60 amd 1972 No. 36 s 31
sub 1985 No. 94 s 48; 1995 No. 1 s 7

Statement of vendor

s 61 ins 1985 No. 94 s 49
amd 1991 No. 97 s 3 sch 2

Division 4A—Body corporate managers

div hdg ins 1988 No. 22 s 18 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Body corporate manager's licenses

s 61A ins 1988 No. 22 s 18 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Code of professional conduct of body corporate managers

s 61B ins 1988 No. 22 s 18 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Proceedings as to commission, etc.

s 61C ins 1988 No. 22 s 18 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Each place of business to be approved

s 62 ins 1985 No. 94 s 49
amd 1995 No. 57 s 4 sch 1; 1995 No. 57 s 4 sch 1

Tampering with odometers

s 64 ins 1995 No. 1 s 8

Evidence of tampering by a motor dealer

s 65 ins 1995 No. 1 s 8

Code of professional conduct of motor dealers

s 66 amd 1995 No. 57 s 4 sch 1

Production of licences etc.

s 67 pres s 67 sub 1972 No. 36 s 34; 1975 No. 82 s 17
om 1984 No. 41 s 4 sch
pres s 67 ins 1985 No. 94 s 50

Obligations and rights as to assurance of title to lot in a building units plan

s 67A ins 1972 No. 36 s 34
amd 1980 No. 42 s 4(2)(a) sch 1 pt 2
om 1984 No. 41 s 4 sch

Restriction on agents purchasing or selling property

s 69 amd 1975 No. 82 s 15; 1985 No. 94 s 51; 1991 No. 97 s 3 sch 2; 1995 No. 57 s 4 sch 1; 1995 No. 57 s 4 sch 1

When agent prohibited from having interest in option to purchase land

s 70 amd 1985 No. 94 s 52; 1991 No. 97 s 3 sch 2; 1995 No. 57 s 4 sch 1

Beneficial interest

s 71 amd 1972 No. 36 s 33; 1975 No. 82 s 16
sub 1985 No. 94 s 53
amd 1991 No. 97 s 3 sch 2

False representations as to property

s 72 amd 1985 No. 94 s 54; 1995 No. 57 s 4 sch 1; 1995 No. 58 s 4 sch 1

Representations as to availability of finance

s 73 amd 1985 No. 94 s 55; 1991 No. 97 s 3 sch 2; 1995 No. 57 s 4 sch 1

Lands not lawfully usable for residential purposes

s 74 amd 1985 No. 94 s 56; 1991 No. 97 s 3 sch 2; 1995 No. 57 s 4 sch 1

When the Minister may cancel licences

s 75 amd 1972 No. 36 s 35; 1984 No. 41 s 4 sch (as amd 1985 No. 43 s 21(b));
1997 No. 40 s 2 sch

Restriction on remedy for commission

s 76 amd 1975 No. 82 s 18; 1985 No. 94 s 57

Offence to charge fee for preparing document

s 77 ins 1985 No. 94 s 58
amd 1991 No. 97 s 3 sch 2

Offence to demand excess or improper remuneration

s 78 amd 1985 No. 94 s 59; 1995 No. 57 s 4 sch 1

Prohibited practices

s 79 ins 1975 No. 82 s 19
amd 1985 No. 94 s 60

Appointment of substitute licensee

s 82 amd 1972 No. 36 s 36; 1988 No. 22 s 19 (never proclaimed into force and
om 1994 No. 87 s 4(1) sch 7)

Death of licensee

s 83 amd 1988 No. 22 s 20 (never proclaimed into force and om 1994 No. 87
s 4(1) sch 7)

Effect of disqualification on membership of corporation or partnership

s 84 sub 1985 No. 94 s 61
amd 1988 No. 22 s 21 (never proclaimed into force and om 1994 No. 87
s 4(1) sch 7); 1995 No. 57 s 4 sch 1

Lending licence or certificate of registration

s 85 amd 1985 No. 94 s 62; 1995 No. 57 s 4 sch 1

Registered office and address

s 88 amd 1985 No. 94 s 63; 1988 No. 22 s 22; 1995 No. 57 s 4 sch 1; 1995
No. 57 s 4 sch 1

Publication of name of licensee

s 89 amd 1972 No. 36 s 37; 1985 No. 94 s 64; 1988 No. 22 s 23 (never
proclaimed into force and om 1994 No. 87 s 4(1) sch 7); 1991 No. 97
s 3 sch 2

PART 6—DISCIPLINARY PROCEEDINGS

pt hdg ins 1985 No. 94 s 65

Interpretation of part

s 90 ins 1985 No. 94 s 65

Grounds for exercise of disciplinary powers against licensed or registered individual

s 91 ins 1985 No. 94 s 65
amd 1988 No. 22 s 24; 1993 No. 82 s 9; 1995 No. 57 s 4 sch 1

Grounds for exercise of disciplinary powers against corporation

s 92 ins 1985 No. 94 s 65
amd 1993 No. 82 s 10

Division 1A—Body corporate manager’s accounts

div hdg ins 1988 No. 22 s 28 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Wrongful conversion and false accounts

s 92A ins 1988 No. 22 s 28 (as amd 1988 No. 88 s 3 sch 1) (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Appointment of auditors

s 92B ins 1988 No. 22 s 28 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Remote localities

s 92C ins 1988 No. 22 s 29 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Audit of accounts under sole control of body corporate manager

s 92D ins 1988 No. 22 s 29 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Inspection, audit etc., by registrar or inspector

s 92E ins 1988 No. 22 s 29 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Duties of bank managers

s 92F ins 1988 No. 22 s 30 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Entries in body corporate manager’s books deemed made by him

s 92G ins 1988 No. 22 s 30 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Accounts that are liable to audit

s 92H ins 1988 No. 22 s 30 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Application of division to body corporate

s 92I ins 1988 No. 22 s 30 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Commencement of disciplinary proceedings

s 93 ins 1985 No. 94 s 65

Copy of complaint to executive officer

s 94 ins 1985 No. 94 s 65; 1991 No. 97 s 3 sch 2

Hearing

s 95 ins 1985 No. 94 s 65

Disciplinary powers of committee

s 96 ins 1985 No. 94 s 65
amd 1995 No. 57 s 4 sch 1

Recovery of fine or costs

s 97 ins 1985 No. 94 s 65
amd 1991 No. 97 s 3 sch 2

Disqualification of unlicensed executive officer

s 98 ins 1985 No. 94 s 65

Committee to give reasons

s 99 ins 1985 No. 94 s 65
amd 1988 No. 22 s 25

Surrender of cancelled licence or certificate of registration

s 100 ins 1985 No. 94 s 65
amd 1991 No. 97 s 3 sch 2

Suspension of licence or certificate of registration

s 101 ins 1985 No. 94 s 65
amd 1991 No. 97 s 3 sch 2

Effect of order of suspension

s 102 ins 1985 No. 94 s 65

Exemptions

s 103 sub 1995 No. 57 s 4 sch 1

Application of trust money

s 104 amd 1972 No. 36 s 38; 1985 No. 94 s 66; 1988 No. 22 s 26; 1991 No. 41 s 5; 1991 No. 97 s 3 sch 2; 1992 No. 12 s 66 sch; 1993 No. 82 s 11; 1995 No. 57 s 4 sch 1

Wrongful conversion and false accounts

s 106 amd 1985 No. 94 s 67; 1988 No. 88 s 3 sch 1; 1995 No. 57 s 4 sch 1

Application of s 106 to accounts of body corporate managers

s 106A ins 1988 No. 22 s 34 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Trust account of employers

s 107 amd 1972 No. 36 s 39; 1991 No. 41 s 6

Appointment of auditors

s 108 amd 1985 No. 94 s 68; 1990 No. 85 s 5 sch 2; 1991 No. 97 s 3 sch 2; R1 (see RA s 37)

Audit of trust accounts

s 110 amd 1972 No. 36 s 40; 1978 No. 70 s 7; 1985 No. 94 s 69; 1991 No. 97 s 3 sch 2; R1 (see RA s 37)

Inspection, audit etc. by registrar or inspector

s 111 amd 1972 No. 36 s 41; 1975 No. 82 s 20; 1984 No. 41 s 4 sch (as amd 1985 No. 43 s 21(b)); 1985 No. 94 s 70; 1993 No. 82 s 3 sch 1; 1995 No. 57 s 4 sch 1; 1995 No. 58 s 4 sch 1

Duties of managers of financial institutions

s 112 amd 1972 No. 36 s 42; 1975 No. 82 s 21; 1985 No. 94 s 71; 1991 No. 41 s 7; 1993 No. 82 s 3 sch 1

Entries in licensee's books deemed made by licensee

s 113 amd 1981 No. 26 s 3

Auctioneers and agents fidelity guarantee fund

s 114 amd 1985 No. 94 s 72; 1989 No. 19 s 57(3); 1991 No. 41 s 8

Contributions to fund

s 115 amd 1972 No. 36 s 43; 1975 No. 82 s 22; 1985 No. 94 s 73; 1988 No. 22 s 3, 31 (s 31 never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Additional levies

s 116 amd 1975 No. 82 s 23; 1985 No. 94 s 74

Registrar may enter into agreements with financial institutions

s 117 sub 1991 No. 41 s 9
amd 1993 No. 82 s 12

Interest on money in the fund

s 118 amd 1972 No. 36 s 45; 1975 No. 82 s 25

Application of fund

s 119 amd 1975 No. 82 s 26; 1984 No. 41 s 4 sch; 1985 No. 94 s 76; 1988 No. 22 s 32 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7); 1991 No. 41 s 10; 1991 No. 97 s 3 sch 2; 1995 No. 1 ss 9, 3 sch 1

Claims against the fund

s 120 amd 1972 No. 36 s 47; 1993 No. 82 s 13; 1995 No. 1 s 10; 1995 No. 57 s 4 sch 1

Advertisement relating to defaulting licensee and claims

s 121 amd 1972 No. 36 s 48; 1995 No. 57 s 4 sch 1

Distribution from fund

s 122 amd 1972 No. 36 s 49; 1985 No. 94 s 77

Subrogation

s 124 ins 1993 No. 82 s 14

Directors to compensate fund

s 125 ins 1985 No. 94 s 78
amd 1988 No. 22 s 33 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Freezing of trust accounts and ultimate disposal of trust money of defaulting licensees

s 128 amd 1972 No. 36 s 50; 1975 No. 82 s 27; 1985 No. 94 s 79; 1991 No. 97 s 3 sch 2; 1993 No. 82 s 3 sch 1; 1995 No. 57 s 4 sch 1

Interpretation

s 129 amd 1993 No. 82 s 3 sch 1

Appointment of receiver in certain cases

s 130 amd 1988 No. 22 s 35 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Receiver may forbid withdrawal of money from financial institution

- s 133** prev s 133 ins 1995 No. 57 s 4 sch 1
om R3 (see RA s 37)
pres s 133 amd 1993 No. 82 s 3 sch 1

PART 8—PASTORAL HOUSES

- pt hdg** ins 1985 No. 94 s 81

Interpretation

- s 149** ins 1985 No. 94 s 81; 1995 No. 57 s 4 sch 1

Pastoral house corporation licence

- s 150** ins 1985 No. 94 s 81
amd 1988 No. 22 s 36

Licensed pastoral house may act as real estate agent and auctioneer

- s 151** ins 1985 No. 94 s 81
amd 1988 No. 22 s 37

Pastoral house corporation licence deemed to be corporation licence

- s 152** ins 1985 No. 94 s 81

Pastoral house director's licence, pastoral house manager's licence and pastoral house auctioneer's licence

- s 153** ins 1985 No. 94 s 81

Holder of pastoral house director's licence may act as real estate agent

- s 154** ins 1985 No. 94 s 81

Pastoral house director's licence deemed to be real estate agent's licence

- s 155** ins 1985 No. 94 s 81

Holder of pastoral house manager's licence may act as holder of manager's (real estate agency) licence

- s 156** ins 1985 No. 94 s 81

Pastoral house manager's licence deemed to be manager's (real estate agency) licence

- s 157** ins 1985 No. 94 s 81

Holder of pastoral house auctioneer's licence may act as auctioneer

- s 158** ins 1985 No. 94 s 81
amd 1988 No. 22 s 38

Pastoral house auctioneer's licence deemed to be general auctioneer's licence

- s 159** ins 1985 No. 94 s 81

Licence to be endorsed with name of pastoral house

- s 160** ins 1985 No. 94 s 81

Surrender of licence

- s 161** ins 1985 No. 94 s 81

Licence holder to act only for pastoral house endorsed on licence

- s 162** ins 1985 No. 94 s 81

Committee may grant licences subject to conditions

s 163 ins 1985 No. 94 s 81

Employee may act as real estate salesperson

s 164 ins 1985 No. 94 s 81

Fees and contributions for licences

s 165 ins 1985 No. 94 s 81

Pastoral house to notify registrar

s 166 ins 1985 No. 94 s 81
amd 1995 No. 57 s 4 sch 1

Proof that a person is or is not licensed

s 167 amd 1988 No. 22 s 39 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Civil remedies not affected

s 168 amd 1988 No. 22 s 40 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Offences by corporations

s 169 amd 1988 No. 22 s 41 (never proclaimed into force and om 1994 No. 87 s 4(1) sch 7)

Offences generally

s 170 amd 1985 No. 94 s 82; 1991 No. 97 s 3 sch 2; 1995 No. 57 s 4 sch 1

Service of documents

s 171 ins 1985 No. 94 s 83
amd 1988 No. 22 s 42

References to repealed Act

s 172 ins 1994 No. 87 s 3 sch 2

Approval of forms

s 173 ins 1995 No. 57 s 4 sch 1

Regulation making power

s 174 amd 1972 No. 36 s 51; 1975 No. 82 s 28; 1985 No. 94 s 84; 1988 No. 22 s 43; 1991 No. 97 s 3 sch 2; 1993 No. 82 s 3 sch 1; 1995 No. 57 s 4 sch 1; 1995 No. 58 s 4 sch 1

Approved forms

s 175 ins 1991 No. 97 s 3 sch 2
sub 1995 No. 57 s 4 sch 1
exp 28 February 1996 (see s 175(3))

8 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS

under the Reprints Act 1992 s 43 as required by the Auctioneers and Agents Act 1971
s 133

Previous	Renumbered as
5	2
5, def “commercial agent”, (ba)	2, def “commercial agent”, (c)
5, def “commercial agent”, (c)	2, def “commercial agent”, (d)
5, def “commercial agent”, (d)	2, def “commercial agent”, (e)
5, def “commercial agent”, (e)	2, def “commercial agent”, (f)
5, def “commercial agent”, (f)	5, def “commercial agent”, (g)
5, def “commercial agent”, (g)	2, def “commercial agent”, (h)
5, def “commercial agent”, (h)	2, def “commercial agent”, (i)
5A	3
5A(1)(c)	3(1)(b)
5A(1)(d)	3(1)(c)
5A(1)(e)	3(1)(d)
5A(1)(f)	3(1)(e)
5A(1)(h)	3(1)(f)
5A(1)(i)	3(1)(g)
5A(1)(j)	3(1)(h)
5A(1)(k)	3(1)(i)
5A(1)(l)	3(1)(j)
5B	4
5C	5
5D	6
5E	7
6	8
6(2A)	8(3)
6(2B)	8(4)
6(2BA)	8(5)
6(2C)	8(6)
6(3)	8(7)
6(4)	8(8)
6(5)	8(9)
6(7)	8(10)
6(8)	8(11)
7	9
7(h)	9(g)
8	10
9	11
10	12
11	13

12	14
12B	15
13	16
13(3)	16(2)
13(4)	16(3)
13A	17
13A(5)	17(3)
13A(6)	17(4)
13A(7)	17(5)
14	18
14A	19
14B	20
14C	21
15	22
15(3A)	22(4)
15(3B)	22(5)
15(4)	22(6)
15(5)	22(7)
15(6)	22(8)
15A	23
16	24
16(4)(d)	24(4)(c)
17	25
17(1)(b)	25(1)(a)
17(1)(c)	25(1)(b)
17(1)(d)	25(1)(c)
17(3A)	25(4)
17(4)	25(5)
18	26
18(4A)	26(5)
18(4B)	26(6)
18(4C)	26(7)
18(5)	26(8)
18(6)	26(9)
18(7)	26(10)
18(8)	26(11)
18(9)	26(12)
18(10)	26(13)
18(11)	26(14)
19	27
21	28
21(1)(i)	28(1)(h)
21(1)(j)	28(1)(i)
23	29
23(2A)	29(3)
23(3)	29(4)

23(4)	29(5)
23(5)	29(6)
23(6)	29(7)
23(7)	29(8)
23(8)	29(9)
25	30
26	31
27	32
27(1)(b)	32(1)(a)
27(1)(c)	32(1)(b)
27(1)(d)	32(1)(c)
27(3A)	32(4)
27(4)	32(5)
28	33
28(4A)	33(5)
28(4B)	33(6)
28(4C)	33(7)
28(4D)	33(8)
28(5)	33(9)
28(6)	33(10)
28(6A)	33(11)
28(7)	33(12)
29	34
30	35
31	36
32	37
33	38
34	39
35	40
35(4A)	40(5)
35(5)	40(6)
35(6)	40(7)
35(7)	40(8)
36	41
38	42
39	43
40	44
42	45
42(1A)	45(2)
42(2)	45(3)
42(3)	45(4)
42(4)	45(5)
43	46
44	47
45	48
46	49

47	50
48	51
49	52
50	53
51	54
52	55
53	56
54	57
55	58
56	59
57	60
58	61
58A	62
59	63
59A	64
59B	65
60	66
60A	67
61	68
62	69
62(4A)	69(5)
62(5)	69(6)
62(6)	69(7)
62(7)	69(8)
62(8)	69(9)
62(9)	69(10)
63	70
64	71
65	72
65(1A)	72(2)
65(2)	72(3)
65(3)	72(4)
65(4)	72(5)
65(5)	72(6)
65(6)	72(7)
66	73
68	74
69	75
69(1)(ba)	75(1)(c)
69(1)(c)	75(1)(d)
70	76
70A	77
71	78
71A	79
72	80
73	81

74	82
75	83
76	84
77	85
78	86
79	87
80	88
80(3A)	88(4)
80(4)	88(5)
80(5)	88(6)
81	89
81(6A)	89(7)
81(7)	89(8)
pt 5A	pt 6
81A	90
81B	91
81B(ba)	91(c)
81B(c)	91(d)
81B(d)	91(e)
81B(e)	91(f)
81B(f)	91(g)
81B(g)	91(h)
81B(h)	91(i)
81C	92
81C(ba)	92(c)
81C(c)	92(d)
81C(d)	92(e)
81C(e)	92(f)
81C(f)	92(g)
81C(g)	92(h)
81C(h)	92(i)
81C(i)	92(j)
81D	93
81E	94
81F	95
81G	96
81H	97
81I	98
81J	99
81K	100
81K(2A)	100(3)
81K(3)	100(4)
81K(4)	100(5)
81L	101
81M	102
pt 6	pt 7

82	103
83	104
83(1A)	104(2)
83(2)	104(3)
83(2A)	104(4)
83(3)	104(5)
83(3A)	104(6)
83(4)	104(7)
83(5)	104(8)
83(5A)	104(9)
83(6)	104(10)
83(6A)	104(11)
83(7)	104(12)
83(8)	104(13)
83(9)	104(14)
83(10)	104(15)
83(11)	104(16)
83(12)	104(17)
84	105
85	106
86	107
87	108
87(1)(b)	108(1)(a)
87(1)(c)	108(1)(b)
88	109
89	110
89(1A)	110(2)
89(1B)	110(3)
89(1C)	110(4)
89(2)	110(5)
89(3)	110(6)
89(4)	110(7)
90	111
90(1)(aa)	111(1)(b)
90(1)(b)	111(1)(c)
90(5A)	111(6)
90(6)	111(7)
90(6)(aa)	111(7)(b)
90(6)(b)	111(7)(c)
90(6)(c)	111(7)(d)
90(6)(d)	111(7)(e)
90(7)	111(8)
90(8)	111(9)
90(9)	111(10)
90(10)	111(11)
91	112

92	113
93	114
94	115
95	116
96	117
97	118
98	119
98(1A)	119(2)
98(2)	119(3)
98(3)	119(4)
98(4)	119(5)
98(4A)	119(6)
98(5)	119(7)
98(6)	119(8)
99	120
99(2A)	120(3)
99(2B)	120(4)
99(3)	120(5)
99(4)	120(6)
99(5)	120(7)
100	121
101	122
102	123
103	124
103A	125
104	126
105	127
106	128
106(13)	128(12)
106(14)	128(13)
106(15)	128(14)
106(16)	128(15)
107	129
108	130
109	131
110	132
111	133
112	134
113	135
114	136
115	137
116	138
117	139
118	140
119	141
120	142

121	143
122	144
123	145
124	146
125	147
126	148
pt 6A	pt 8
126A	149
126B	150
126C	151
126D	152
126E	153
126F	154
126G	155
126H	156
126I	157
126J	158
126K	159
126L	160
126M	161
126N	162
126O	163
126P	164
126Q	165
126R	166
pt 7	pt 9
127	167
128	168
129	169
130	170
130A	171
130B	172
130C	173
131	174
132	175

9 Transitional and savings provisions

Auctioneers and Agents Amendment Act 1991 No. 41 s 13 provides—

Transitional provision

13. Despite the amendments of the *Auctioneers and Agents Act 1971*

made by this Act, that Act continues to apply to and in respect of all money received by auctioneers, real estate agents, commercial agents and motor dealers before the commencement of this section, as if this Act had not been enacted.