

Queensland



Property Agents and Motor Dealers Act 2000

PROPERTY AGENTS AND MOTOR DEALERS REGULATION 2001

**Reprinted as in force on 1 January 2003
(includes amendments up to SL No. 327 of 2002)**

Reprint No. 1F

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

Also see endnotes for information about—

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

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PROPERTY AGENTS AND MOTOR DEALERS REGULATION 2001

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PROPERTY AGENTS AND MOTOR DEALERS REGULATION 2001

[as amended by all amendments that commenced on or before 1 January 2003]

PART 1—PRELIMINARY

1 Short title

This regulation may be cited as the *Property Agents and Motor Dealers Regulation 2001*.

2 Commencement

(1) Schedule 2, sections 1, 2(2), 3 and 5 to 8 commence on 1 September 2001.

(2) The remaining provisions of this regulation commence on 1 July 2001.

PART 2—APPLICATIONS, FEES AND COMMISSIONS

3 Applications for licence or registration—photograph

(1) This section applies to an applicant under the Act who is required to supply photographs of the applicant to accompany an application.

(2) Each photograph must be—

- (a) at least 35 mm x 45 mm and not more than 40 mm x 50 mm in size; and
- (b) certified by a person who—
 - (i) is at least 18 years of age; and

- (ii) has known the applicant for not less than 12 months immediately before the application; and
- (iii) is not related to the applicant by birth or marriage.

(3) The person certifying the photograph must write on the back of the photograph 'This is a true photograph of [name of applicant]' and sign his or her name.

4 Fee concessions for multiple licences

(1) A person who applies for a licence must pay an application fee and a licence issue fee.

(2) However, if the person is the holder of a licence or the person's application for a licence has not been decided when an application for a second or other licence is made, no licence issue fee is payable for the second or other licence.

(3) Also, if the person is a corporation and either the holder of a licence or the corporation's application for a licence has not been decided when an application for a second or other licence is made, no application fee or licence issue fee is payable for the second or other licence.

(4) If a person applies for 2 or more licences at the same time and the licence issue fees for the licences are different, the greater of the fees is payable.

(5) The second or other licence expires at the same time as the first licence.

(6) A person who holds more than 1 licence may renew all of the person's licences on the payment of 1 licence renewal fee.

(7) If the licence renewal fees are different, the greater of the fees is payable.

5 Fees

The fees payable under the Act, other than in relation to the tribunal, are in schedule 1, part 1.

6 Commissions

The maximum commissions chargeable under the Act are in schedule 1, part 2.

PART 3—LICENCES AND REGISTRATION CERTIFICATES

7 Educational or other qualifications for licence—Act, ss 35, 36, 41 and 44

The educational or other qualifications for a restricted letting agent's licence, real estate agent's licence, auctioneer's licence or motor dealer's licence are in schedule 2.

8 Period of employment for licence

For sections 38(1)(c), 39(1)(c) and 40(1)(c)¹ of the Act, the following periods of employment by a pastoral house are prescribed—

- (a) for a pastoral house director's licence—3 years;
- (b) for a pastoral house manager's licence—2 years;
- (c) for a pastoral house auctioneer's licence—1 year.

9 Application for renewal or restoration of licence

(1) For sections 57, 58, 60 and 61² of the Act, the licensee must have actively carried out the activities authorised under the licence for 1 year during the 5 years immediately before the application.

(2) However, if the licensee has held a licence under the Act or the repealed Act for less than 1 year at the time of the application, the licensee

1 Sections 38 (Eligibility for pastoral house director's licence), 39 (Eligibility for pastoral house manager's licence) and 40 (Eligibility for pastoral house auctioneer's licence) of the Act

2 Sections 57 (Application for renewal), 58 (Chief executive may renew or refuse to renew licence), 60 (Application for restoration) and 61 (Chief executive may restore or refuse to restore licence) of the Act

must have actively carried out the activities authorised under the licence during the currency of the licence.

10 Display of licence

For section 77³ of the Act, the principal licensee must display the licensee's licence in a conspicuous position at the licensee's registered office so it is clearly visible when entering the registered office.

Examples—

1. Display in a prominent position on the reception counter.
2. Display at eye level on a wall that customers view on first entering the registered office.

11 Licensees to notify chief executive of change of circumstances

For section 81⁴ of the Act, each of the following is a prescribed change—

- (a) a change of a licensee's name;
- (b) a change in a licensee's residential address or postal address;
- (c) a change in a licensee's home telephone number, business telephone number, business facsimile number, mobile telephone number or e-mail address;
- (d) a change of a licensee's business name;
- (e) for a corporation, a change of the corporation's name;
- (f) for a corporation, a change of a director;
- (g) the happening of a thing mentioned in section 26 or 27⁵ of the Act that affects a person's suitability to hold a licence.

3 Section 77 (Display of licence) of the Act

4 Section 81 (Licensees to notify chief executive of changes in circumstances) of the Act

5 Section 26 (Suitability of applicants and licensees—individuals) or 27 (Suitability of applicants and licensees—corporations) of the Act

12 Registered employee to notify chief executive of change of circumstances

For section 110⁶ of the Act, each of the following is a prescribed change—

- (a) a change of a registered employee's name;
- (b) a change in a registered employee's residential address or postal address;
- (c) a change in a registered employee's home telephone number, mobile telephone number or e-mail address;
- (d) a change of a registered employee's employer;
- (e) a change of a registered employee's place of employment;
- (f) the happening of a thing mentioned in section 85⁷ of the Act that affects a person's suitability to be a registered employee.

13 Display and publication of licensee's name

(1) This section applies for sections 123, 158, 195, 252, 273, 328 and 352⁸ of the Act.

(2) The principal licensee must display in lettering at least 1.5 cm in height at each place of business—

- (a) the licensee's name followed by the word 'licensee'; and
- (b) if the licensee is not the person in charge of the business at the place, the name of the person in charge at the place; and
- (c) the category of the licensee's licence.

Example for paragraph (c)—

Property agents and motor dealers licence (real estate agent).

6 Section 110 (Registered employees to notify chief executive of changes in circumstances) of the Act

7 Section 85 (Suitability of applicants) of the Act

8 Sections 123 (Display and publication of licensee's name), 158 (Display and publication of licensee's name), 195 (Display and publication of licensee's name), 252 (Display and publication of licensee's name), 273 (Display and publication of licensee's name), 328 (Display and publication of licensee's name) and 352 (Display and publication of licensee's name) of the Act

(3) The names and category must be displayed in a conspicuous position at each of the principal licensee's places of business so it is clearly visible when entering the place of business.

Examples for subsection (3)—

1. Display in a prominent position on the reception counter.
2. Display at eye level on a wall that customers view on first entering the place of business.

(4) In addition to the requirements in subsection (2), an auctioneer who conducts an auction must display the auctioneer's name at the place of the auction—

- (a) in lettering at least 1.5 cm in height; and
- (b) in a conspicuous position so it is clearly visible when entering the place; and
- (c) for the entire period of the auction.

14 Educational or other qualifications for registration as registered employee—Act, s 90

The educational or other qualifications for registration as a registered employee are in schedule 2.

15 Employee particulars for employment register

(1) For sections 124, 159, 196, 253, 274, 329 and 353⁹ of the Act, the following particulars for each employee are prescribed—

- (a) for each employed licensee—the employed licensee's licence number;
- (b) for each registered employee—the registered employee's registration number;
- (c) the expiry date of the employee's licence or registration certificate;

9 Sections 124 (Principal licensee must keep employment register), 159 (Principal licensee must keep employment register), 196 (Pastoral house to keep employment register), 253 (Principal licensee must keep employment register), 274 (Principal licensee must keep employment register), 329 (Principal licensee to keep employment register) and 353 (Principal licensee must keep employment register) of the Act

- (d) the date the employee started employment with the principal licensee;
- (e) if the employee's employment with the principal licensee has been terminated, the date of the termination;
- (f) the date of the employee's employment authority;
- (g) a copy of the employee's employment authority;
- (h) the date of any change to the employee's employment authority.

(2) In this section—

“**employee**” includes a trainee auctioneer.

16 Form of employment register

The employment register may be kept in a hard copy or an electronic form.

PART 4—RESTRICTED LETTING AGENTS, REAL ESTATE AGENTS AND PASTORAL HOUSES

17 Appointment of restricted letting agent, real estate agent or pastoral house

For sections 114(3)(b), 133(3)(b) and 173(3)(b)¹⁰ of the Act, the appointment must state the following—

‘The maximum amount of commission chargeable is [state percentage and estimated amount in dollars]. Please note you have a right to negotiate an amount lower than this amount of commission.’

10 Sections 114 (Appointment of restricted letting agent), 133 (Appointment of real estate agent—general) and 173 (Appointment of pastoral house—general) of the Act

PART 5—AUCTIONEERS AND MOTOR DEALERS

18 Appointment of auctioneer

For section 210(3)(c)¹¹ of the Act, the appointment must state the following—

‘The maximum amount of commission chargeable is [state amount or percentage]. Please note you have a right to negotiate an amount lower than this amount of commission.’

19 Buyer’s premium

(1) For section 215¹² of the Act, the auctioneer must disclose the percentage of the buyer’s premium payable on the purchase of the chattel by—

- (a) announcing, at the start of the auction, that a buyer’s premium of [state percentage] is payable on a successful bid; and
- (b) displaying in a prominent position at the auction a notice to that effect in lettering at least 10 cm in height; and
- (c) writing it on each bidder’s card in lettering at least 3 mm in height; and
- (d) stating it on each written advertisement of the auction.

(2) The buyer’s premium must not be more than 10% of the purchase price.

20 Guarantee of title for motor vehicles

(1) For sections 233(4) and 295(4)¹³ of the Act, the following particulars of the vehicle are prescribed—

- (a) the vehicle identification number;
- (b) the vehicle’s engine number or, if the vehicle is a caravan, the vehicle’s chassis number;

11 Section 210 (Appointment of auctioneer—general) of the Act

12 Section 215 (Buyer’s premium) of the Act

13 Sections 233 (Guarantee of title for motor vehicles) and 295 (Guarantee of title for motor vehicles) of the Act

- (c) the registration number;
- (d) the year of manufacture.

(2) For sections 233(10) and 295(5) of the Act, the maximum amount the selling agent may charge the buyer for the provision of the security interest certificate is \$10 plus the cost of the certificate.

21 Particular vehicles without statutory warranty to be identified when offered for sale

(1) For sections 238 and 316¹⁴ of the Act, an auctioneer or motor dealer must have a sign displayed in a prominent position on each unwarranted vehicle stating in lettering at least 5 cm in height ‘no statutory warranty’.

(2) The sign must be displayed—

- (a) in close proximity to the price or description of the vehicle; or
- (b) if the vehicle does not have a price or description displayed, on its front windscreen.

(3) However, if an auctioneer or motor dealer sells only unwarranted vehicles from particular premises, it is enough to display a sign in a prominent position at the main entrance to the premises stating in lettering at least 10 cm in height that vehicles sold from the premises do not have a statutory warranty.

(4) In an advertisement for the sale of an unwarranted vehicle, the auctioneer or motor dealer must state that the vehicle does not have a statutory warranty.

22 Defects not covered by statutory warranty

For sections 243 and 319¹⁵ of the Act, the following are prescribed as defects in a warranted vehicle that are not covered by the statutory warranty—

- (a) a defect in the vehicle’s fitted airbag;

14 Sections 238 (Particular vehicles without statutory warranty to be identified when offered for sale) and 316 (Particular vehicles without statutory warranty to be identified when offered for sale) of the Act

15 Sections 243 (Defects not covered by statutory warranty) and 319 (Defects not covered by statutory warranty) of the Act

- (b) a defect in the vehicle's installed radio, tape recorder or CD player;
- (c) for a class B warranted vehicle, a defect in the vehicle's air conditioning system.

23 Warrantor to record particulars of extension of warranty period

(1) For sections 245 and 321¹⁶ of the Act, the warrantor may keep the record in a hard copy or an electronic form.

(2) The warrantor must number and date each entry in the record.

24 Auctioneer or motor dealer to obtain statement from seller of vehicle

For sections 254 and 331¹⁷ of the Act, the statement the seller gives the auctioneer or motor dealer must contain the following particulars—

- (a) the seller's name;
- (b) the seller's address;
- (c) if the seller is not a motor dealer, the seller's driver licence number;
- (d) the vehicle's make;
- (e) the vehicle's body model;
- (f) the vehicle's colour;
- (g) the vehicle's engine number or, if the vehicle is a caravan, the vehicle's chassis number;
- (h) the vehicle's identification number;
- (i) the vehicle's registration number;
- (j) the vehicle's year of manufacture;
- (k) the vehicle's odometer reading in words and figures;

16 Sections 245 (Warrantor to record particulars of extension of warranty period) and 321 (Warrantor to record particulars of extension of warranty period) of the Act

17 Sections 254 (Auctioneer to obtain statement from seller of vehicle) and 331 (Motor dealer to obtain statement from seller of vehicle) of the Act

- (l) if known to the seller, whether the vehicle's odometer has been replaced;
- (m) whether the vehicle's engine has been replaced by or for the seller and, if so, the approximate date of replacement;
- (n) whether there is a mortgage or other encumbrance on the vehicle and, if so, the amount owing and to whom it is owing;
- (o) if the vehicle is to be sold at auction, the reserve price for the auction;
- (p) the date the seller gives the statement to the auctioneer or motor dealer.

25 Auctioneer or motor dealer to give statement to buyer of vehicle

For sections 255 and 332¹⁸ of the Act, the statement the auctioneer or motor dealer gives the buyer must contain the following particulars—

- (a) the name of the person who owned the vehicle immediately before the sale;
- (b) the vehicle's engine number or, if the vehicle is a caravan, the vehicle's chassis number;
- (c) the vehicle's identification number;
- (d) the vehicle's registration number;
- (e) the vehicle's year of manufacture;
- (f) the vehicle's odometer reading in words and figures;
- (g) if known to the auctioneer or motor dealer, whether the odometer has been replaced;
- (h) the date the motor dealer gives the statement to the buyer;
- (i) the price paid by the vehicle's buyer;
- (j) if known to the auctioneer or motor dealer, whether the vehicle's engine was replaced and, if so, the approximate date of replacement.

18 Sections 255 (Auctioneer to give statement to buyer of vehicle) and 332 (Motor dealer to give statement to buyer of vehicle) of the Act

26 Particular vehicles for sale on consignment to be identified as not being subject to cooling-off period

(1) For section 299¹⁹ of the Act, a motor dealer must have a sign displayed in a prominent position on each vehicle that is not subject to a cooling-off period stating in lettering at least 5 cm in height ‘no cooling-off period—sale on consignment’.

(2) The sign must be displayed—

- (a) in close proximity to the price or description of the vehicle; or
- (b) if the vehicle does not have a price or description displayed, on its front windscreen.

(3) However, if a motor dealer sells only vehicles not subject to a cooling-off period from particular premises, it is enough to display a sign in a prominent position at the main entrance to the premises stating in lettering at least 10 cm in height that vehicles sold from the premises are not subject to a cooling-off period.

(4) In an advertisement for the sale of a vehicle that is not subject to a cooling-off period, the motor dealer must state ‘no cooling-off period applies’.

27 Notice to be given about used motor vehicle—no prior contract

For section 300(3)(c)²⁰ of the Act, the written statement must contain the following—

‘A one day cooling-off period applies to this contract. You may avoid the contract by giving written notice indicating you end the contract to [state motor dealer’s name] at [state place of business]. The written notice must be given before the cooling-off period ends on [state date and time]. If the contract is ended, the motor dealer may keep \$100 of any deposit paid.’

19 Section 299 (Particular vehicles for sale on consignment to be identified as not being subject to cooling-off period) of the Act

20 Section 300 (Notice to be given about used motor vehicle—no prior contract) of the Act

28 Consideration for cooling-off period

For section 304²¹ of the Act, the maximum non-refundable deposit is \$100.

29 Consideration for option

For section 305²² of the Act, the maximum non-refundable deposit is \$100.

30 Motor dealer to keep transaction register

(1) For section 330(2)²³ of the Act, the following particulars are prescribed—

- (a) the date of receipt by the motor dealer;
- (b) a brief description of the transaction;

Examples for paragraph (b)—

1. Sale on consignment for a motor dealer.
 2. Sale on consignment for a private seller.
 3. Sale by a motor dealer for the motor dealer.
- (c) the vehicle's odometer reading in words and figures as at the date of receipt by the motor dealer;
 - (d) the vehicle's make;
 - (e) the vehicle's body model;
 - (f) the vehicle's colour;
 - (g) the vehicle's engine number or, if the vehicle is a caravan, the vehicle's chassis number;
 - (h) the vehicle's identification number;
 - (i) the vehicle's registration number;
 - (j) the vehicle's year of manufacture;
 - (k) the date of the vehicle's sale;

21 Section 304 (Consideration for cooling-off period) of the Act

22 Section 305 (Consideration for option) of the Act

23 Section 330 (Motor dealer to keep transactions register) of the Act

- (l) the following details of the vehicle's disposal—
 - (i) if the vehicle is sold—the sale price and the name and address of the buyer;
 - (ii) if the vehicle is accepted for sale on consignment and is returned to its owner—the date the vehicle is returned;
 - (iii) if the vehicle is offered for sale at auction and not sold—the date of the auction, the amount of the highest bid and, if known, the name and address of the highest bidder;
- (m) the name and address of the vehicle's seller;
- (n) the number of the security interest certificate given to the buyer;
- (o) if the vehicle is moved from 1 place of business to another—
 - (i) the date of the move; and
 - (ii) the place the vehicle is located;
- (p) if the motor dealer operates from a number of places of business, the vehicle's exact location.

(2) However, if a motor dealer acquires a used motor vehicle, whether or not as a complete unit, primarily to break-up for sale as parts or for use in the assembly of vehicles for sale as complete units or as parts, the following particulars only are prescribed for section 330(2) of the Act—

- (a) the date of receipt by the motor dealer;
- (b) the vehicle's make;
- (c) the vehicle's body model;
- (d) the vehicle's colour;
- (e) the vehicle's engine number or, if the vehicle is a caravan, the vehicle's chassis number;
- (f) the name and address of the vehicle's seller.

31 Form of transaction register

The transaction register may be kept in a hard copy or an electronic form.

32 Motor dealer receipts

(1) If a motor dealer receives a payment from a buyer, a prospective buyer or an option holder in relation to the purchase of a used motor vehicle, the motor dealer must give promptly to the buyer a receipt headed 'Property Agents and Motor Dealers Act 2000' that contains the following particulars—

- (a) the name of the motor dealer;
- (b) the name of the buyer, prospective buyer or option holder;
- (c) the vehicle's purchase price;
- (d) the date of the payment;
- (e) the amount of the payment;
- (f) if the buyer, prospective buyer or option holder pays for the vehicle by cheque, the drawer of the cheque;
- (g) the vehicle's make;
- (h) the vehicle's body model;
- (i) the vehicle's colour;
- (j) the vehicle's engine number or, if the vehicle is a caravan, the vehicle's chassis number;
- (k) the vehicle's identification number;
- (l) the vehicle's registration number;
- (m) the vehicle's year of manufacture;
- (n) the name and signature of the person giving the receipt.

Maximum penalty—10 penalty units.

(2) The motor dealer must keep a duplicate of a receipt issued under this section in the motor dealer's records.

Maximum penalty—10 penalty units.

33 Auction store books and auction sales books

(1) This section applies to—

- (a) personal property other than livestock placed by a person with an auctioneer for sale; or

- (b) an auctioneer's personal property other than livestock that is to be sold by the auctioneer.

(2) The auctioneer must—

- (a) keep at the auctioneer's registered office—
 - (i) an auction store book; and
 - (ii) an auction sales book; and
- (b) if property is placed by a person with an auctioneer for sale, enter the particulars mentioned in subsection (3) in the auction store book when the property is placed with the auctioneer; and
- (c) enter the particulars mentioned in subsection (5) in the auction sales book within 24 hours after the property has been auctioned.

Maximum penalty—10 penalty units.

(3) The auction store book must contain the following particulars—

- (a) for personal property other than the auctioneer's personal property—
 - (i) the date the property is received by the auctioneer; and
 - (ii) the name and address of the seller or person who delivered the property to the auctioneer;
- (b) the details of any marks, numbers or other particulars that are relied upon for the identification of the property;
- (c) the property's reserve price for the auction;
- (d) the property's description.

(4) If the property consists of articles, the articles may be grouped and entered in the auction store book as 1 property if—

- (a) the lot value of the articles is not more than \$50; and
- (b) the property is placed by 1 person with the auctioneer.

(5) The auction sales book must contain the following particulars—

- (a) the date of the auction of the property;
- (b) the property's description;
- (c) the property's sale price;
- (d) the buyer's name and address;

- (e) a cross-reference to the property's relevant entry in the auction store book.

34 Auction contract books

(1) This section applies to land placed by a person with an auctioneer for sale.

(2) The auctioneer must—

- (a) keep at the auctioneer's registered office an auction contract book; and
- (b) enter the particulars mentioned in subsection (3) in the auction contract book when the land is placed by the person with the auctioneer for sale; and
- (c) enter the particulars mentioned in subsection (5) in the auction contract book after the land has been auctioned.

Maximum penalty—10 penalty units.

(3) The auction contract book must contain the following particulars when the land is placed by the person with the auctioneer for sale—

- (a) the date the land is placed by the person with the auctioneer for sale;
- (b) the land's lot-on-plan description;
- (c) if there is an improvement on the land, a description of the improvement;
- (d) the name and address of the owner or the person who has placed the land with the auctioneer for sale;
- (e) the reserve price for the auction;
- (f) any special conditions for the sale of the land;
- (g) the proposed date, time and place of the auction.

(4) However, if the particulars mentioned in subsection (3) are contained in the appointment under section 210²⁴ of the Act and the auctioneer keeps the appointment or a copy of the appointment at the auctioneer's registered office, the auctioneer does not have to enter the particulars in the auction contract book.

24 Section 210 (Appointment of auctioneer—general) of the Act

(5) The auction contract book must contain the following particulars after the auction—

- (a) the date of the auction of the land;
- (b) the land's description;
- (c) if the land is sold at auction—
 - (i) the price paid by the buyer; and
 - (ii) the buyer's name and address;
- (d) if the land is not sold at auction—
 - (i) the amount of the highest bid at auction; and
 - (ii) if known, the highest bidder's name and address.

35 Sales of livestock by auctioneers

(1) This section applies to sales of livestock by an auctioneer.

(2) The auctioneer must announce at the auction the name of the client for whom the auctioneer is selling the livestock.

Maximum penalty—10 penalty units.

(3) The auctioneer must—

- (a) keep at the auctioneer's registered office a livestock auction book; and
- (b) enter the particulars mentioned in subsection (4) in the livestock auction book before the livestock are auctioned; and
- (c) if the livestock are sold, enter the particulars mentioned in subsection (5) in the livestock auction book.

Maximum penalty—10 penalty units.

(4) The livestock auction book must contain the following particulars—

- (a) the description of the livestock;
- (b) the number of livestock;
- (c) the name and address of the client for whom the auctioneer is selling the livestock.

(5) The livestock auction book must contain the following particulars—

- (a) the date of the auction of the livestock;

- (b) the buyer's name;
- (c) the price paid by the buyer.

(6) If the livestock are to be sold on other than a cash basis, the auctioneer must—

- (a) obtain a written authority for the sale—
 - (i) signed by the client; and
 - (ii) containing a statement that the auctioneer must pay to the client only the money actually paid to the auctioneer for the sale of the livestock less the auctioneer's commission and authorised expenses; and
- (b) keep the authority in the auctioneer's registered office.

Maximum penalty for subsection (6)—10 penalty units.

36 Form of auction books

The auction store book, the auction sales book, the auction contract book and the livestock auction book may be kept in hard copy or electronic form.

PART 6—COMMERCIAL AGENTS

37 Statements by commercial agents

(1) This section applies to a commercial agent who repossesses a chattel that is subject to a hire purchase agreement, bill of sale or chattel lease agreement.

(2) The commercial agent must—

- (a) complete and sign 3 copies of a statement within 7 days after the repossession containing the following particulars—
 - (i) the principal licensee's name;
 - (ii) the date of repossession;
 - (iii) the name of the person from whom the chattel was repossessed;
 - (iv) the address from where the chattel was repossessed;

- (v) if more than 1 chattel was repossessed, the number of chattels repossessed;
- (vi) a description of each chattel repossessed; and
- (b) give a copy of the statement to the commercial agent's client; and
- (c) give a copy of the statement to the person from whom the chattel was repossessed; and
- (d) keep a copy of the statement at the commercial agent's registered office or place of business.

Maximum penalty—10 penalty units.

(3) For subsection (2)(c), the commercial agent gives a copy of the statement to the person from whom the chattel was repossessed if the copy—

- (a) is given personally to the person; or
- (b) is left in a conspicuous position at the person's place of residence or registered place of business last known to the commercial agent; or
- (c) is sent by post to the person's place of residence or registered place of business last known to the commercial agent.

PART 7—ACCOUNTS, FUNDS AND RECORD KEEPING

Division 1—Prescribed books, accounts and records

38 Books, accounts and records to be kept by principal licensee

(1) A principal licensee must keep—

- (a) the following books, accounts and records—
 - (i) a register of trust account receipt forms;
 - (ii) consecutively numbered trust account receipt forms in duplicate;
 - (iii) a trust account deposit book of trust account deposit forms in duplicate;

- (iv) a trust account cash book;
- (v) a trust account journal of consecutively numbered folios;
- (vi) a trust account ledger; and
- (b) if the principal licensee is an auctioneer, real estate agent, commercial agent or motor dealer—full and accurate accounts of all money paid or received for a sale or transaction.

Maximum penalty—10 penalty units.

(2) The books, accounts and records mentioned in subsection (1) must be kept in such a way that they can be easily and properly audited.

Maximum penalty—10 penalty units.

39 Entries in books, accounts and records

A principal licensee must not enter in any book, account or record kept for this Act any particular that is not a particular relating to the principal licensee's business.

Maximum penalty—10 penalty units.

Division 2—Register of trust account receipt forms

40 Register

A register of trust account receipt forms must contain a record of the receipt number of each receipt form held by the principal licensee.

Division 3—Trust account receipt forms

41 Trust account receipt forms

(1) A trust account receipt form must be headed 'Property Agents and Motor Dealers Act 2000 Trust Account Receipt'.

(2) A completed trust account receipt form must contain the following particulars—

- (a) the name of the principal licensee on whose behalf the receipt was completed;

- (b) the date the receipt was completed;
- (c) the name of the person for whom the receipt was completed;
- (d) the name of the person on whose behalf the trust money was received;
- (e) a brief description of the matter for which the trust money was received;
- (f) the amount of trust money received, in figures;
- (g) how the trust money was received, for example, in cash, by cheque or by electronic funds transfer;
- (h) the signature of the person who completed the receipt.

(3) If a payment from a prospective buyer is for an option to purchase a used motor vehicle for sale on consignment, the completed trust account receipt form must contain, in addition to the particulars mentioned in subsection (2), the following particulars—

- (a) the vehicle's make;
- (b) the vehicle's body model;
- (c) the vehicle's colour;
- (d) the vehicle's engine number or, if the vehicle is a caravan, the vehicle's chassis number;
- (e) the vehicle's identification number;
- (f) the vehicle's registration number;
- (g) the vehicle's year of manufacture.

(4) Each trust account receipt form must include provision for the particulars mentioned in subsections (2) and (3).

(5) A duplicate trust account receipt form must also be headed 'Office Copy' or 'Duplicate Copy'.

42 Dealing with trust account receipt forms

(1) A principal licensee must complete a trust account receipt form—

- (a) if a principal licensee receives trust money by way of electronic funds transfer—on the day the principal licensee becomes aware of the receipt of the trust money; or

- (b) if a principal licensee receives trust money other than by way of electronic funds transfer—immediately the principal licensee receives the trust money.

Maximum penalty—10 penalty units.

(2) The principal licensee must ensure—

- (a) a trust account receipt form—
 - (i) is used only for the receipt of trust money; and
 - (ii) includes the relevant particulars mentioned in section 41; and
 - (iii) if requested by the person from whom the trust money was received, is given to the person promptly; and
- (b) a legible copy of each trust account receipt form completed by the principal licensee is kept in the principal licensee's records; and
- (c) if the principal licensee cancels a trust account receipt form, the form is kept in the principal licensee's records.

Maximum penalty—10 penalty units.

Division 4—Trust account deposit book

43 Trust account deposit forms

A trust account deposit form must contain the following particulars—

- (a) the name and account number of the trust account into which the trust money is deposited;
- (b) the amount and the date of the deposit;
- (c) the signature of the depositor;
- (d) if a cheque is given to a licensee, the name of the drawer of the cheque and the name and branch of the financial institution against which the cheque is drawn.

44 Depositing trust money

If trust money is deposited into a principal licensee's trust account, the principal licensee must—

- (a) if the trust money is deposited by way of electronic funds transfer—
 - (i) obtain, at least once each week, a transaction report statement from the financial institution into which the trust money is paid showing deposits made into the trust account; and
 - (ii) ensure the statement is kept in the principal licensee's records; and
- (b) if the trust money is deposited other than by way of electronic funds transfer—ensure a copy of the trust account deposit form is kept in the principal licensee's records.

Maximum penalty—10 penalty units.

Division 5—Disbursement of trust money

45 Disbursements

(1) If the principal licensee draws a cheque against a trust account kept by the principal licensee under the Act, the principal licensee must ensure the following particulars are written on the cheque butt or another document—

- (a) the date the cheque is drawn;
- (b) the name of the person to whom the cheque is payable;
- (c) the name of the person on whose behalf the cheque is drawn;
- (d) a brief description of the matter for which the cheque is drawn;
- (e) the amount for which the cheque is drawn.

Maximum penalty—10 penalty units.

(2) If the principal licensee disburses trust money through electronic funds transfer, the principal licensee must keep a transaction report from a financial institution that contains the following particulars—

- (a) the date of the disbursement;
- (b) the amount of the disbursement;
- (c) the account name and number to which the trust money was disbursed.

Maximum penalty—10 penalty units.

(3) A principal licensee must keep each cheque butt or the other document or the transaction report containing the particulars mentioned in subsection (1) or (2) in the principal licensee's records.

Example of 'other document'—

A cheque requisition form.

Maximum penalty—10 penalty units.

Division 6—Trust account cash book

46 Trust account cash book—entries

(1) If a principal licensee receives trust money, or pays trust money to a person, the principal licensee must, within 2 business days after the day the money is received or paid, enter the following particulars in the trust account cash book—

- (a) if trust money is received—
 - (i) the date the money is received; and
 - (ii) the name of the person from whom the money is received; and
 - (iii) the name of the person on whose behalf the money is received; and
 - (iv) a brief description of the matter for which the money is received; and
 - (v) the amount received; and
 - (vi) the trust account receipt number; and
 - (vii) the date the trust money is paid into the licensee's trust account maintained at the financial institution where the general trust account is kept;
- (b) if trust money is paid—
 - (i) the date the money is paid; and
 - (ii) the name of the person to whom the money is paid; and
 - (iii) the name of the person on whose behalf the money is paid; and

- (iv) a brief description of the matter for which the money is paid; and
- (v) the amount paid; and
- (vi) the cheque number or the electronic fund transfer number.

Maximum penalty—10 penalty units.

(2) Despite subsection (1), if a principal licensee receives trust money by way of electronic funds transfer, the principal licensee may enter the particulars in the trust account cash book on the day the principal licensee becomes aware of the receipt of the trust money.

47 Trust account cash book—reconciliation

(1) A principal licensee must, within 5 business days after the end of each month—

- (a) reconcile the trust account cash book balance at the end of the month with the trust account ledger balances that show each trust account creditor's name and the amount held on behalf of the creditor; and
- (b) reconcile the financial institution's statement balance for the principal licensee's trust account at the end of the month with the trust account cash book balance at the end of the month.

Maximum penalty—10 penalty units.

(2) A reconciliation under subsection (1)(b) must contain the following particulars—

- (a) the balance of the financial institution statement balance at the end of the month;
- (b) the amount of trust money on hand at the end of the month and the date the money was received;
- (c) the amount of each outstanding deposit at the end of the month and the date the amount was received and deposited;
- (d) details of any outstanding cheques at the end of the month, including—
 - (i) the cheque number of each cheque; and
 - (ii) the amount and date of each cheque;

- (e) details of any electronic fund transfer deposits recorded at the end of the month that are recorded on the financial institution statement but are not entered in the trust account cash book;
- (f) the balance of the trust account at the end of the month as shown in the trust account cash book.

(3) For a reconciliation under subsection (1)(b), the principal licensee must reconcile the trust account cash book balance at the end of the month with the amount obtained by—

- (a) adding the amounts mentioned in subsection (2)(b) and (c) to the financial institution statement balance amount at the end of the month; and
- (b) deducting the amount of each outstanding cheque at the end of the month and the amount of each electronic funds transfer deposit at the end of the month that are recorded on the financial institution statement but are not entered in the trust account cash book from the amount obtained under paragraph (a).

(4) The principal licensee must keep the reconciliations mentioned in subsection (1) in the principal licensee's records.

Maximum penalty for subsection (4)—10 penalty units.

Division 7—Trust account ledger

48 Keeping trust account ledgers

A principal licensee must keep a separate ledger account in the trust account ledger for each person on whose behalf the principal licensee receives trust money.

Maximum penalty—10 penalty units.

49 Trust account ledger—form

(1) Each trust ledger account must contain the following particulars—

- (a) the surname and initials of the person on whose behalf the trust money is received or paid;
- (b) a brief description of the matter for which the trust money is received or paid.

(2) Also, each trust ledger account must contain the following particulars for each entry in the ledger account—

- (a) the date the trust money is received or paid;
- (b) the name of the person from whom the trust money is received or to whom the trust money is paid;
- (c) a brief description of the matter for which the trust money is received or paid;
- (d) the amount received or paid;
- (e) if trust money is received—the receipt number;
- (f) if trust money is paid—the cheque number or the electronic fund transfer number;
- (g) the balance of the account after each entry;
- (h) if trust money is transferred to the trust ledger account from another trust ledger account under section 51,²⁵ the number of the trust account journal folio on which the transfer is recorded.

50 Trust account cash book entries to be posted to ledger account

A principal licensee must ensure that each entry in the trust account cash book is posted to the trust ledger account for the person on whose behalf the trust money is received or paid within 2 business days after the day the trust money is received or paid.

Maximum penalty—10 penalty units.

Division 8—Trust account journals

51 Transfer by journal entry

(1) A principal licensee may transfer trust money from a trust ledger account to another trust ledger account by a journal entry.

(2) However, a principal licensee must not transfer trust money by a journal entry unless the principal licensee is entitled to pay the money from the trust ledger account for the purpose for which it is transferred.

25 Section 51 (Transfer by journal entry)

Maximum penalty—10 penalty units.

(3) A principal licensee must ensure that a trust account journal includes the following particulars for each entry in the journal—

- (a) the date the trust money is transferred;
- (b) the name of the person, and a brief description of the matter conducted for the person, from whose trust ledger account the money is transferred;
- (c) the name of the person, and a brief description of the matter conducted for the person, to whose trust ledger account the money is transferred;
- (d) the amount transferred.

Maximum penalty—10 penalty units.

Division 9—Computer system records

52 Keeping computer system records

(1) This section applies if a principal licensee keeps any books, accounts or records mentioned in section 38²⁶ by a computerised accounting system.

(2) The principal licensee must ensure that—

- (a) the computer system does not allow the deletion of a trust ledger account unless—
 - (i) the account has a zero balance; and
 - (ii) a record of the account, as it was immediately before its deletion, is kept in a visible form; and
- (b) an amendment of the particulars of a transaction recorded on the computer system is made by a separate transaction recorded on the system; and
- (c) a record of information produced by the computer in a visible form is produced in chronological sequence.

Maximum penalty—10 penalty units.

26 Section 38 (Books, accounts and records to be kept by principal licensee)

(3) The computer system must be capable of keeping a record in chronological sequence of any change (by creation, amendment or deletion) to the following information stored in the computer—

- (a) the name and address of a person for whom trust money is held;
- (b) the description of a matter being conducted by the principal licensee;
- (c) the amount of trust money held for a person by the principal licensee;
- (d) the financial institution account number of a trust account.

(4) The principal licensee must, as soon as practicable after the end of each month, make a print-out of the following—

- (a) if a trust ledger account is kept by a computerised accounting system—the balance of the ledger account;
- (b) if a reconciliation under section 46(1)(a) is kept by a computerised accounting system—the reconciliation;
- (c) if a trust account financial institution statement balance is reconciled with the trust account cash book balance by a computerised accounting system—the reconciliation of the financial institution statement.

Maximum penalty—10 penalty units.

(5) If a trust account ledger is kept by a computerised accounting system, a principal licensee must immediately before a trust ledger account or investment ledger account is deleted from the computer system—

- (a) make a print-out of the ledger account; and
- (b) keep the print-out in the principal licensee's records.

Maximum penalty—10 penalty units.

Division 10—Auditors**53 Application for approval as auditor**

For section 393²⁷ of the Act, the amount of professional indemnity insurance prescribed is \$250 000.

54 Transfer of trust accounts

(1) This section applies if—

- (a) a licensee enters into a partnership with another licensee; or
- (b) a change occurs in the members of a partnership of licensees; or
- (c) a licensee disposes of the licensee's business to another licensee by any means.

(2) The trust money held by a former licensee or partnership must be properly disbursed and then held by the former licensee or partnership until the person who conducts the final audit certifies that the trust money has been properly disbursed.

Maximum penalty—10 penalty units.

(3) Despite subsection (2), if the money is held in a trust account on a trust creditor's behalf, the money may be transferred if—

- (a) the trust creditor authorises the transfer in writing; or
- (b) for trust money in the form of a bond or a security deposit in relation to a tenancy agreement, the landlord and the tenant authorise the transfer in writing.

Division 11—Agreements with financial institutions about keeping general trust accounts**54A Financial institutions to which s 410 of the Act applies**

Section 410²⁸ of the Act applies to a financial institution mentioned in schedule 3.

27 Section 393 (Application for approval as auditor) of the Act

28 Section 410 (Agreements with financial institutions) of the Act

PART 8—CLAIMS AGAINST THE FUND

55 Limits on recovery from fund

(1) For section 492(2)²⁹ of the Act, the amount prescribed for a single claim is \$200 000.

(2) For section 492(3) of the Act, the total amount that may be paid from the fund because of, or arising out of, a wrong by a single person is \$2 000 000.

PART 9—GENERAL

56 Amendments of a register or record

(1) This section applies to a register or record kept under section 124, 159, 196, 245, 253, 274, 321, 329, 330 or 353³⁰ of the Act.

(2) If the register or record is a hard copy register or record, a person amending the register or record must not amend it unless the person—

- (a) rules through the incorrect information; and
- (b) gives the correct information in close proximity to the incorrect information; and
- (c) records a reason for the amendment in close proximity to the amendment; and
- (d) signs and dates the amendment.

Maximum penalty—10 penalty units.

29 Section 492 (Limits on recovery from fund) of the Act

30 Section 124 (Principal licensee must keep employment register), 159 (Principal licensee must keep employment register), 196 (Pastoral house to keep employment register), 245 (Warrantor to record particulars of extension of warranty period), 253 (Principal licensee must keep employment register), 274 (Principal licensee must keep employment register), 321 (Warrantor to record particulars of extension of warranty period), 329 (Principal licensee to keep employment register), 330 (Motor dealer to keep transactions register) or 353 (Principal licensee must keep employment register) of the Act

(3) If the register or record is an electronic register or record, a person amending the register or record must not amend it unless the person—

- (a) strikes out the incorrect information; and
- (b) inserts the correct information immediately under the incorrect information; and
- (c) records in close proximity to the amendment—
 - (i) a reason for the amendment; and
 - (ii) the name of the person who made the amendment; and
 - (iii) the date of the amendment.

Maximum penalty—10 penalty units.

57 Documents in electronic form

If a document required to be kept under the Act is stored in electronic form on a computer, the principal licensee must ensure that—

- (a) the computer system has enough capacity and backup capability to record the information required to be kept under the Act; and
- (b) the computer system is backed-up at least once a month; and
- (c) a computer disk or other electronic device used to store the backed-up information is kept in a location that—
 - (i) is not the licensee's principal place of business or the licensee's agent's business address; and
 - (ii) is unaffected by magnetic interference or other thing that may adversely affect the stored information.

Maximum penalty—10 penalty units.

58 Keeping documents

(1) A principal licensee must keep in a secure, orderly and accessible manner for a period of not less than 5 years all documents the principal licensee must keep under the Act.

Maximum penalty—10 penalty units.

(2) Subsection (1) is subject to the *Evidence Act 1977*, section 111.³¹

³¹ *Evidence Act 1977*, section 111 (Transparency etc. may be preserved in lieu of document)

SCHEDULE 1

FEES AND COMMISSION

sections 5 and 6

PART 1—FEES

Division 1—Licence application fees

| | \$ |
|--|--------|
| 1. Application fee for licence. | 102.00 |
| 2. Application fee for renewal of licence. | 51.00 |
| 3. Application fee for restoration of licence | 51.00 |
| 4. Application fee for substitute licence | 51.00 |
| 5. Application fee for amendment of condition of licence | 51.00 |
| 6. Application fee for replacement licence | 25.60 |

Division 2—Licence issue fees and renewal fees

| | \$ |
|------------------------------|---------|
| 7. Licence issue fee— | |
| (a) corporation— | |
| for 1 year | 392.00 |
| for 3 years | 785.00 |
| (b) individual— | |
| (i) restricted letting agent | |
| for 1 year | 764.00 |
| for 3 years | 1527.00 |
| (ii) real estate agent | |
| for 1 year | 764.00 |

SCHEDULE 1 (continued)

| | \$ |
|---------------------------------|---------|
| for 3 years | 1527.00 |
| (iii) pastoral house director | |
| for 1 year | 764.00 |
| for 3 years | 1527.00 |
| (iv) pastoral house manager | |
| for 1 year | 280.00 |
| for 3 years | 560.00 |
| (v) pastoral house auctioneer | |
| for 1 year | 542.00 |
| for 3 years | 1084.00 |
| (vi) auctioneer | |
| for 1 year | 764.00 |
| for 3 years | 1527.00 |
| (vii) motor dealer | |
| for 1 year | 764.00 |
| for 3 years | 1527.00 |
| (viii) commercial agent | |
| for 1 year | 764.00 |
| for 3 years | 1527.00 |
| (ix) property developer | |
| for 1 year | 764.00 |
| for 3 years | 1527.00 |
| (x) property developer director | |
| for 1 year | 764.00 |
| for 3 years | 1527.00 |
| 8. Licence renewal fee— | |
| (a) corporation— | |
| for 1 year | 196.00 |
| for 3 years | 589.00 |
| (b) individual— | |
| (i) restricted letting agent | |
| for 1 year | 382.00 |

SCHEDULE 1 (continued)

| | \$ |
|---------------------------------|---------|
| for 3 years | 1145.00 |
| (ii) real estate agent | |
| for 1 year | 382.00 |
| for 3 years | 1145.00 |
| (iii) pastoral house director | |
| for 1 year | 382.00 |
| for 3 years | 1145.00 |
| (iv) pastoral house manager | |
| for 1 year | 140.00 |
| for 3 years | 420.00 |
| (v) pastoral house auctioneer | |
| for 1 year | 271.00 |
| for 3 years | 813.00 |
| (vi) auctioneer | |
| for 1 year | 382.00 |
| for 3 years | 1145.00 |
| (vii) motor dealer | |
| for 1 year | 382.00 |
| for 3 years | 1145.00 |
| (viii) commercial agent | |
| for 1 year | 382.00 |
| for 3 years | 1145.00 |
| (ix) property developer | |
| for 1 year | 382.00 |
| for 3 years | 1145.00 |
| (x) property developer director | |
| for 1 year | 382.00 |
| for 3 years | 1145.00 |

SCHEDULE 1 (continued)

Division 3—Deactivated licence fees

| | \$ |
|--|--------|
| 9. Fee to deactivate a licence | 51.00 |
| 10. Fee to reactivate a licence | 51.00 |
| 11. Fee to renew a deactivated licence for 1 year— | |
| (a) corporation | 98.00 |
| (b) individual— | |
| (i) restricted letting agent | 191.00 |
| (ii) real estate agent | 191.00 |
| (iii) pastoral house director | 191.00 |
| (iv) pastoral house manager | 70.00 |
| (v) pastoral house auctioneer | 136.00 |
| (vi) auctioneer | 191.00 |
| (vii) motor dealer | 191.00 |
| (viii) commercial agent | 191.00 |
| (ix) property developer | 191.00 |
| (x) property developer director | 191.00 |
| 12. Fee to renew a deactivated licence for 3 years— | |
| (a) corporation | 295.00 |
| (b) individual— | |
| (i) restricted letting agent | 572.00 |
| (ii) real estate agent | 572.00 |
| (iii) pastoral house director | 572.00 |
| (iv) pastoral house manager | 210.00 |
| (v) pastoral house auctioneer | 407.00 |
| (vi) auctioneer | 572.00 |
| (vii) motor dealer | 572.00 |
| (viii) commercial agent | 572.00 |
| (ix) property developer | 572.00 |
| (x) property developer director | 572.00 |

SCHEDULE 1 (continued)

Division 4—Licence restoration fees

| | \$ |
|--|--------|
| 13. Fee to restore a licence (other than for a deactivated licence) | 67.00 |
| 14. Fee to restore deactivated licence for 1 year— | |
| (a) corporation | 132.00 |
| (b) individual— | |
| (i) restricted letting agent | 224.00 |
| (ii) real estate agent | 224.00 |
| (iii) pastoral house director | 224.00 |
| (iv) pastoral house manager | 103.00 |
| (v) pastoral house auctioneer | 169.00 |
| (vi) auctioneer | 224.00 |
| (vii) motor dealer | 224.00 |
| (viii) commercial agent | 224.00 |
| (ix) property developer | 224.00 |
| (x) property developer director | 224.00 |
| 15. Fee to restore deactivated licence for 3 years— | |
| (a) corporation | 328.00 |
| (b) individual— | |
| (i) restricted letting agent | 606.00 |
| (ii) real estate agent | 606.00 |
| (iii) pastoral house director | 606.00 |
| (iv) pastoral house manager | 244.00 |
| (v) pastoral house auctioneer | 440.00 |
| (vi) auctioneer | 606.00 |
| (vii) motor dealer | 606.00 |
| (viii) commercial agent | 606.00 |
| (ix) property developer | 606.00 |
| (x) property developer director | 606.00 |

SCHEDULE 1 (continued)

Division 5—Licence register fees

| | \$ |
|--|-------|
| 16. Licence register— | |
| (a) inspection fee | 10.20 |
| (b) fee for a copy of an entry | 10.20 |

Division 6—Registration certificate fees

| | \$ |
|---|--------|
| 17. Application fee for registration | 61.40 |
| 18. Application fee for renewal of registration | 30.70 |
| 19. Registration issue fee | |
| for 1 year | 142.00 |
| for 3 years | 284.00 |
| 20. Registration renewal fee | |
| for 1 year | 71.00 |
| for 3 years | 213.00 |
| 21. Application fee for restoration | 30.70 |
| 22. Registration restoration fee | 11.90 |
| 23. Application fee for amendment of condition | 30.70 |
| 24. Application fee for replacement registered certificate . . | 15.30 |
| 25. Registered certificate register— | |
| (a) inspection fee | 10.20 |
| (b) fee for a copy of an entry | 10.20 |

Division 7—Tribunal fees

| | \$ |
|---|----|
| 26. Tribunal register— | |
| (a) fee for search or inspection of a file— | |

SCHEDULE 1 (continued)

| | \$ |
|---|--------|
| (i) for each hour or part of an hour | 10.20 |
| (ii) for each day | 41.40 |
| (b) certification fee | 38.40 |
| 27. Application for review of chief executive's decision under section 483 of the Act | 51.00 |
| 28. Application for review fee under section 502 of the Act | 102.50 |
| 29. Application fee for extension of time | 51.00 |

Division 8—Other fees

| | \$ |
|--|-------|
| 30. Undertakings register— | |
| (a) inspection fee | 10.20 |
| (b) fee for a copy of an entry | 10.20 |

PART 2—COMMISSION*Division 1—Residential property***31 Maximum commission on purchase or sale of residential property**

The maximum commission payable on the purchase or sale of residential property is—

- (a) if the purchase or sale price is not more than \$18 000—5% of the price; or
- (b) if the purchase or sale price is more than \$18 000—
 - (i) \$900; and
 - (ii) 2.5% of the part of the price that is more than \$18 000.

SCHEDULE 1 (continued)

32 Maximum commission on letting of residential property

(1) The maximum commission payable on the letting of residential property is—

- (a) under a tenancy for more than 1 year—
 - (i) if more than 5 years—7.5% of the average annual rental; or
 - (ii) if not more than 5 years—5% of the first year's rental; or
- (b) under a tenancy for not more than 1 year—
 - (i) if more than 3 weeks—1 week's rental; or
 - (ii) if more than 2 weeks and not more than 3 weeks—75% of 1 week's rental; or
 - (iii) if not more than 2 weeks—50% of 1 week's rental.

(2) Subsection (1)(b) does not apply if the licensee is entitled to commission under section 33(1).

33 Maximum commission on collection of rents of residential property

(1) The maximum commission payable on the collection of rents from residential property is—

- (a) for a tenancy for holiday purposes—
 - (i) if the tenancy is not more than 3 months—12% of the rent collected; or
 - (ii) if the tenancy is more than 3 months—9% of the rent collected; or
- (b) for a tenancy for residential purposes—
 - (i) if commission has not been paid on the letting of the property under section 32—7.5% of the rental collected; or
 - (ii) if commission has been paid on the letting of the property under section 32—5% of the rent collected for the first year and 7.5% from then on.

(2) In addition to the amount mentioned in subsection (1), if the licensee is required to arrange and supervise repairs and replacements for the

SCHEDULE 1 (continued)

property, the licensee is also entitled to the further amounts as agreed in writing between the parties.

34 Maximum commission on building for removal

The maximum commission payable on the sale of a building for removal is 10% of the purchase price.

*Division 2—Rural land***35 Maximum commission on sale of freehold rural land**

The maximum commission payable on the sale of freehold rural land—

- (a) if the sale price is not more than \$18 000—5% of the price; or
- (b) if the sale price is more than \$18 000—
 - (i) \$900; and
 - (ii) 2.5% of the part of the price that is more than \$18 000.

36 Maximum commission on sale of leasehold rural land

The maximum commission payable on the sale of leasehold rural land is—

- (a) if the sale price is not more than \$1 000—10% of the price; or
- (b) if the sale price is more than \$1 000—
 - (i) \$100; and
 - (ii) 5% of the part of the price that is more than \$1 000 and not more than \$5 000; and
 - (iii) 2.5% of the part of the price that is more than \$5 000.

37 Maximum commission on sale of livestock

The maximum commission payable on the sale of livestock is—

- (a) for sales of stud cattle, stud rams or stud swine—

SCHEDULE 1 (continued)

- (i) if 1 selling agent—5% of the gross proceeds of sale; or
- (ii) if 2 selling agents in conjunction—6% of the gross proceeds of sale; or
- (iii) if more than 2 selling agents in conjunction—
 - (A) 6% of the gross proceeds of sale; and
 - (B) 2% of the gross proceeds of sale for each selling agent additional to the first 2 selling agents; or
- (b) for sales of bloodstock—6% of the gross proceeds of sale; or
- (c) for private sales of cattle or sheep in the paddock, if paragraph (a) does not apply—5% of the gross proceeds of sale; or
- (d) for auction sales or clearing sales of cattle, horses, sheep or swine, if paragraphs (a) and (b) do not apply—5% of the gross proceeds of sale.

38 Maximum commission on letting of rural land

The maximum commission payable on the letting of rural land is—

- (a) if the rental is not more than \$200—10% of the first year's rental; or
- (b) if the rental is more than \$200—
 - (i) \$20; and
 - (ii) 5% of the part of the rental that is more than \$200.

39 Maximum commission on share farming

The maximum commission payable for negotiating a share farming agreement is 1.5% of the amount an owner or lessor advises the licensee the share tenant would be likely to receive as the share tenant's share of the profits for 1 year from the commencement of the agreement based, if possible, on the profits received in a fair average season.

SCHEDULE 1 (continued)

*Division 3—Exchange of properties***40 Maximum commission on exchange of properties**

(1) This section applies to residential or rural property.

(2) The maximum commission payable on an exchange of properties is the amount calculated using the rate prescribed for each property as if each property had been sold separately for the amount adopted by the commissioner of stamp duties as the value of each property respectively for the purposes of the *Stamp Act 1894*.

*Division 4—Motor vehicles***41 Maximum commission on motor vehicles for sale on consignment**

The maximum commission payable on the sale of a motor vehicle on consignment that is not sold by auction is 10% of the vehicle's sale price.

*Division 5—Sale of chattels by auction***42 Maximum commission on chattels for sale by auction**

The maximum commission payable by the seller on the sale of chattels by auction is 12% of the chattel's sale price.

SCHEDULE 2

QUALIFICATIONS FOR PARTICULAR LICENCES AND REGISTRATION CERTIFICATES

sections 7 and 14

1 Restricted letting agent

The prescribed educational qualifications for a restricted letting agent's licence are the successful completion at, or the assessment of competency by, a registered training organisation of the following modules from the national real estate curriculum approved under the *Australian National Training Authority Act 1992* (Cwlth)—

- (a) ABH500 (Real estate industry overview);
- (b) ABH502 (Introduction to property management);
- (c) ABH504 (Real estate accounting);
- (d) ABH508 (Real estate consumer protection);
- (e) ABH512 (Residential tenancies);
- (f) ABH518 (Body corporate legal requirement).

2 Real estate agent

(1) The prescribed educational qualifications for a real estate agent's licence are the successful completion at, or the assessment of competency by, a registered training organisation of the following modules from the national real estate curriculum approved under the *Australian National Training Authority Act 1992* (Cwlth)—

- (a) ABH500 (Real estate industry overview);
- (b) ABH501 (Introduction to sales);
- (c) ABH502 (Introduction to property management);
- (d) ABH504 (Real estate accounting);
- (e) ABH505 (Real estate computer accounting);
- (f) ABH507 (Property research and analysis);

SCHEDULE 2 (continued)

- (g) ABH508 (Real estate consumer protection);
- (h) ABH510 (Contract law for real estate);
- (i) ABH511 (Property law for real estate);
- (j) ABH512 (Residential tenancies);
- (k) ABH513 (Recognising common building styles and faults);
- (l) ABH514 (Property management listings);
- (m) ABH515 (Renting residential properties);
- (n) ABH516 (Servicing managed properties);
- (o) ABH522 (Contracts for the sale of land);
- (p) ABH523 (Methods of sale);
- (q) ABH524 (Property appraisal);
- (r) ABH525 (Listings);
- (s) ABH526 (Property selling);
- (t) NAP750 (Commercial law principles);
- (u) NCS009 (Negotiation skills);
- (v) NCS011 (Client interaction);
- (w) NGMS114 (Managing finance-performance).

(2) However, the prescribed educational qualifications for a limited real estate agent's licence are—

- (a) the successful completion at, or the assessment of competency by, a registered training organisation of the following modules from the national real estate curriculum approved under the *Australian National Training Authority Act 1992* (Cwlth)—
 - (i) ABH500 (Real estate industry overview);
 - (ii) ABH504 (Real estate accounting);
 - (iii) ABH505 (Real estate computer accounting);
 - (iv) ABH508 (Real estate consumer protection);
 - (v) ABH510 (Contract law for real estate);
 - (vi) ABH516 (Servicing managed properties);

SCHEDULE 2 (continued)

- (vii) ABH517 (Introduction to specialised property management);
- (viii) ABH520 (Commercial and industrial leasing and property management);
- (ix) NAP750 (Commercial law principles); or
- (b) the successful completion of—
 - (i) part 1 of the Graduate Certificate in Shopping Centre management, a course of study approved under the *Higher Education Act 1988* (NSW); and
 - (ii) module ABH504 (Real estate accounting) from the national real estate curriculum approved under the *Australian National Training Authority Act 1992* (Cwlth) at a registered training organisation.

(3) The other prescribed qualification for a real estate agent’s licence is employment as a real estate salesperson for a period of 5 years during the relevant period.

(4) In this section—

“**employment**”, as a real estate salesperson, includes lawful employment as a real estate salesperson under the repealed Act.

“**limited real estate agent’s licence**” means a real estate agent’s licence that authorises the holder of the licence to perform only the following activities mentioned in section 128(1)³² of the Act—

- (a) to let businesses or interests in businesses;
- (b) to collect rents;
- (c) to negotiate for the letting of businesses or interests in businesses.

“**relevant period**” means the period starting 7 years before and ending 2 years after the commencement of this section.

32 Section 128 (What a real estate agent’s licence authorises) of the Act

SCHEDULE 2 (continued)

3 Auctioneer

The prescribed qualifications for an auctioneer's licence are—

- (a) the successful completion at, or the assessment of competency by, a registered training organisation of the following modules from the national real estate curriculum approved under the *Australian National Training Authority Act 1992* (Cwlth)—
 - (i) ABH501 (Introduction to sales);
 - (ii) ABH504 (Real estate accounting);
 - (iii) ABH508 (Real estate consumer protection);
 - (iv) ABH522 (Contracts for the sale of land); and
- (b) the conducting of 5 auctions when employed as a trainee auctioneer under the supervision of an auctioneer.

4 Motor dealer

(1) The prescribed educational qualifications for a motor dealer's licence are the successful completion at, or the assessment of competency by, a registered training organisation of the following modules from the Automotive Industry Retail, Service and Repair Training Package approved under the *Australian National Training Authority Act 1992* (Cwlth)—

- (a) AUR38216A (Determine used motor vehicle stock requirements);
- (b) AUR41303A (Apply sales procedures);
- (c) AUR41769A (Sell product);
- (d) AUR41803A (Apply legal requirements relating to product sales);
- (e) AUR41903A (Apply relevant finance, leasing and insurance contracts/policies);
- (f) AUR44230A (Inspect and appraise used motor vehicles in preparation for purchase);
- (g) AUR44355A (Purchase used motor vehicles to supplement stock for sale);

SCHEDULE 2 (continued)

- (h) AUR63238A (Manage complex customer issues);
- (i) AUR70125A (Follow workplace occupational health and safety procedures);
- (j) AUR70314A (Contribute to workplace communication);
- (k) AUR70421A (Establish relations with customer).

(2) However, if a motor dealer's licence authorises the holder of the licence to perform only the activities mentioned in section 279(1)(e) and (f)³³ of the Act, the prescribed qualification is—

- (a) the successful completion at, or the assessment of competency by, a registered training organisation of the following modules from the Automotive Industry Retail, Service and Repair Training Package approved under the *Australian National Training Authority Act 1992* (Cwlth)—
 - (i) AUR37927A (Identify automotive parts/components/accessories);
 - (ii) AUR41303A (Apply sales procedures);
 - (iii) AUR42403A (Apply legal requirements relating to automotive sales);
 - (iv) AUR44355A (Purchase used motor vehicles to supplement stock for sale);
 - (v) AUR63238A (Manage complex customer issues);
 - (vi) AUR70125A (Follow workplace occupational health and safety procedures);
 - (vii) AUR70314A (Contribute to workplace communication);
 - (viii) AUR70421A (Establish relations with customer); or
- (b) 3 years experience as a registered motor salesperson; or
- (c) 3 years experience in an occupation likely to provide the person with knowledge relevant to motor vehicle parts.

Example for paragraph (c)—

Panel beater, motor mechanic, spare parts salesperson.

SCHEDULE 2 (continued)

(3) Also, if a motor dealer's licence authorises the holder of the licence to perform only the activities mentioned in section 279(1)(g) of the Act, no qualifications are prescribed.

(4) The other qualification for a motor dealer's licence is employment for at least 3 years during the 5 years immediately before applying for a motor dealer's licence as—

- (a) a motor salesperson; or
- (b) a licensed manager (motor dealing) under the repealed Act.

(5) In this section—

“employment”, as a motor salesperson, includes lawful employment as a motor salesperson under the repealed Act.

5 Real estate salesperson

The prescribed educational qualifications for registration as a real estate salesperson are the successful completion at, or the assessment of competency by, a registered training organisation of the following modules from the national real estate curriculum approved under the *Australian National Training Authority Act 1992* (Cwlth)—

- (a) ABH500 (Real estate industry overview);
- (b) ABH501 (Introduction to sales);
- (c) ABH502 (Introduction to property management);
- (d) ABH508 (Real estate consumer protection);
- (e) either ABH512 (Residential tenancies) or ABH522 (Contracts for the sale of land).

6 Trainee auctioneer

The prescribed educational qualifications for registration as a trainee auctioneer are the successful completion at, or the assessment of competency by, a registered training organisation of the following modules from the national real estate curriculum approved under the *Australian National Training Authority Act 1992* (Cwlth)—

- (a) ABH501 (Introduction to sales);

SCHEDULE 2 (continued)

- (b) ABH508 (Real estate consumer protection);
- (c) ABH522 (Contracts for the sale of land).

7 Property developer salesperson

The prescribed educational qualifications for registration as a property developer salesperson are the successful completion at, or the assessment of competency by, a registered training organisation of the following modules from the national real estate curriculum approved under the *Australian National Training Authority Act 1992* (Cwlth)—

- (a) ABH500 (Real estate industry overview);
- (b) ABH501 (Introduction to sales);
- (c) ABH508 (Real estate consumer protection);
- (d) ABH522 (Contracts for the sale of land).

8 Motor salesperson

(1) The prescribed educational qualifications for registration as a motor salesperson are the successful completion at, or the assessment of competency by, a registered training organisation of the following modules from the Automotive Industry Retail, Service and Repair Training Package approved under the *Australian National Training Authority Act 1992* (Cwlth)—

- (a) AUR41303A (Apply sales procedures);
- (b) AUR41803A (Apply legal requirements relating to product sales);
- (c) AUR41903A (Apply relevant finance, leasing and insurance contracts/policies);
- (d) AUR70125A (Follow workplace occupational health and safety procedures);
- (e) AUR70314A (Contribute to workplace communication);
- (f) AUR70421A (Establish relations with customer).

(2) However, if a motor salesperson's registration certificate authorises the holder of the certificate to acquire used motor vehicles, whether or not

SCHEDULE 2 (continued)

as complete units, for sale as parts, the prescribed educational qualifications are the successful completion at, or the assessment of competency by, a registered training organisation of the following modules from the Automotive Industry Retail, Service and Repair Training Package approved under the *Australian National Training Authority Act 1992* (Cwlth)—

- (a) AUR37927A (Identify automotive parts/components/accessories);
- (b) AUR41303A (Apply sales procedures);
- (c) AUR42403A (Apply legal requirements relating to automotive sales);
- (d) AUR70125A (Follow workplace occupational health and safety procedures);
- (e) AUR70314A (Contribute to workplace communication);
- (f) AUR70421A (Establish relations with customer).

(3) Also, if a motor salesperson's registration certificate authorises the holder of the certificate to perform only the activities mentioned in section 279(1)(g) of the Act, no qualifications are prescribed.

SCHEDULE 3

FINANCIAL INSTITUTIONS TO WHICH SECTION 410 OF THE ACT APPLIES

section 54A

1. Heritage Building Society Limited ACN 087 652 024.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 January 2003. Future amendments of the Property Agents and Motor Dealers Regulation 2001 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

| Key | Explanation | Key | Explanation |
|--------|--------------------------------|---------|---|
| AIA | = Acts Interpretation Act 1954 | (prev) | = previously |
| amd | = amended | proc | = proclamation |
| amdt | = amendment | prov | = provision |
| ch | = chapter | pt | = part |
| def | = definition | pubd | = published |
| div | = division | R[X] | = Reprint No.[X] |
| exp | = expires/expired | RA | = Reprints Act 1992 |
| gaz | = gazette | reloc | = relocated |
| hdg | = heading | renum | = renumbered |
| ins | = inserted | rep | = repealed |
| lap | = lapsed | (retro) | = retrospectively |
| notfd | = notified | s | = section |
| o in c | = order in council | sch | = schedule |
| om | = omitted | sdiv | = subdivision |
| orig | = original | SIA | = Statutory Instruments Act 1992 |
| p | = page | SIR | = Statutory Instruments Regulation 2002 |
| para | = paragraph | SL | = subordinate legislation |
| prec | = preceding | sub | = substituted |
| pres | = present | unnum | = unnumbered |
| prev | = previous | | |

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF REPRINTS

| Reprint No. | Amendments included | Effective | Reprint date |
|-------------|-----------------------|------------------|-----------------------|
| 1 | none | 1 July 2001 | 6 July 2001 |
| 1A | none | 1 September 2001 | 7 September 2001 |
| | | | (Column discontinued) |
| | | | Notes |
| 1B | to SL No. 167 of 2002 | 1 July 2002 | |
| 1C | to SL No. 297 of 2002 | 8 November 2002 | |
| 1D | to SL No. 311 of 2002 | 22 November 2002 | |
| 1E | to SL No. 327 of 2002 | 6 December 2002 | |
| 1F | to SL No. 327 of 2002 | 1 January 2003 | |

5 List of legislation

Property Agents and Motor Dealers Regulation 2001 SL No. 55

made by the Governor in Council on 24 May 2001

notfd gaz 25 May 2001 pp 334–6

ss 1–2 commenced on date of notification

ss 1, 2(2), 3, 5–8 of sch 2 commenced 1 September 2001 (see s 2(1))

remaining provisions commenced 1 July 2001 (see s 2(2))

exp 1 September 2011 (see SIA s 54)

Note— A regulatory impact statement and explanatory note were prepared

amending legislation—

Tourism, Racing and Fair Trading (Fees) Amendment Regulation (No. 1) 2002 SL No. 167 ss 1, 2(1), 3 sch 1

notfd gaz 28 June 2002 pp 876–83

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2002 (see s 2(1))

Property Agents and Motor Dealers Amendment Regulation (No. 1) 2002 SL No. 297

notfd gaz 8 November 2002 pp 857–8

commenced on date of notification

Revenue and Other Legislation Amendment Regulation (No. 2) 2002 SL No. 304 ss 1, 10 sch

notfd gaz 22 November 2002 pp 1018–21

commenced on date of notification

Fair Trading (Fees) Amendment Regulation (No. 1) 2002 SL No. 311 pts 1, 4

notfd gaz 22 November 2002 pp 1018–21

ss 1–2 commenced on date of notification

remaining provisions commenced 1 January 2003 (see s 2)

Note— A regulatory impact statement and explanatory note were prepared

Property Agents and Motor Dealers (Tribunal) Regulation 2002 SL No. 327 pts 1, 3

notfd gaz 6 December 2002 pp 1162–66

ss 1–2 commenced on date of notification

remaining provisions commenced 6 December 2002 (see s 2)

6 List of annotations**Fees**

s 5 amd 2002 SL No. 327 s 7

PART 7—ACCOUNTS, FUNDS AND RECORD KEEPING**Division 11—Agreements with financial institutions about keeping general trust accounts**

div 11 (s 54A) ins 2002 SL No. 297 s 3

SCHEDULE 1—FEES AND COMMISSION

amd 2002 SL No. 167 s 3 sch 1; 2002 SL No. 340 s 10 sch; 2002 SL No. 327 s 8

sub 2002 SL No. 311 s 11

SCHEDULE 3—FINANCIAL INSTITUTIONS TO WHICH SECTION 410 OF THE ACT APPLIES

ins 2002 SL No. 297 s 4