



Queensland

# **Property Agents and Motor Dealers and Other Acts Amendment Act 2006**

**Act No. 10 of 2006**





## Queensland

# Property Agents and Motor Dealers and Other Acts Amendment Act 2006

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Queensland

# Property Agents and Motor Dealers and Other Acts Amendment Act 2006

## Act No. 10 of 2006

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An Act to amend the *Property Agents and Motor Dealers Act 2000*, and for other purposes

[Assented to 15 March 2006]

**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Property Agents and Motor Dealers and Other Acts Amendment Act 2006*.

### **2 Commencement**

Sections 11, 15(2), 16, 19, 21, 23, 33, 34, 40, 41, 47 to 52, 60, 61, 65 to 68, 75, 76 and 84 commence on a day to be fixed by proclamation.

## **Part 2 Amendment of Property Agents and Motor Dealers Act 2000**

### **3 Act amended in pt 2 and sch 1**

This part and schedule 1 amend the *Property Agents and Motor Dealers Act 2000*.

### **4 Amendment of s 4 (Exemption—auctions)**

Section 4—

*insert—*

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

- (i) the person conducting the sale does not receive from the relevant entity a reward for the person's services; and
- (ii) amounts received from the sale are paid directly to an officer or employee of the relevant entity who is authorised by the relevant entity to receive and deal with the amounts; or
- (h) a sale conducted by or for Magic Millions Sales Pty Ltd ACN 078396317 as part of the event known as the Gold Coast Horses in Training Sale if the sale is conducted by a person approved by the chief executive before the sale as a suitable person to conduct the sale.'.

## **5 Insertion of new s 5A**

After section 5—

*insert—*

### **'5A Exemption—liquidators, controllers and receivers**

- '(1) This section applies to—
  - (a) a person, appointed under the Corporations Act, as a liquidator, or controller of property, of a corporation that is authorised under a licence to perform an activity; or
  - (b) a person, appointed under this Act, as a receiver of an entity that is authorised under a licence to perform an activity.
- '(2) The person is exempt from the following provisions while performing a function for which the person is appointed in relation to a business carried on under a licence under this Act in accordance with the conditions applying to the director's licence for the corporation to which the appointment relates—
  - chapter 4, part 1, part 2, division 1, section 114 and part 3
  - chapter 5, part 1, division 1, part 2, division 1, section 133 and part 3
  - chapter 6, part 1, division 1, part 2, division 1, section 173 and part 3

- chapter 7, part 1, division 1, part 2, division 1, section 210 and part 5
- chapter 9, part 1, division 1, part 2, division 1 and section 284
- section 326
- section 327
- section 328
- section 329
- chapter 10, part 1, division 1, part 2, division 1, section 344 and part 3.’.

## **6 Replacement of s 8 (Exemption—livestock sales)**

Section 8—

*omit, insert—*

### **‘8 Exemption—livestock sales**

- ‘(1) A del credere agent is exempt from chapter 12 in relation to a sale of livestock if, under a written agreement made before the sale or sales to which the agreement relates, the agent and the livestock’s seller agree that the agent guarantees payment of the livestock’s purchase price to the seller.<sup>1</sup>
- ‘(2) Subsection (1) applies to a del credere agent—
- (a) only in relation to the sale or sales to which the agreement relates; and
  - (b) only while the agreement is in force.’.

## **7 Amendment of s 13 (Meaning of *beneficial interest*)**

- (1) Section 13(1), cases 7 and 8—  
*renumber* as cases 9 and 10.
- (2) Section 13(1), after case 6—  
*insert—*

---

<sup>1</sup> This practice is commonly known as ‘del credere’.

‘Case 7

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

Case 8

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

- (3) Section 13(2), cases 7 and 8—

*renumber* as cases 9 and 10.

- (4) Section 13(2), after case 6—

*insert*—

‘Case 7

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

Case 8

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

**8 Amendment of s 33 (Criminal history is confidential document)**

Section 33(1), ‘An officer, employee or agent of the department’—

*omit, insert*—

‘A public service employee performing functions under this Act’.

**9 Amendment of s 44 (Eligibility for motor dealer’s licence)**

- (1) Section 44(1)—

*omit, insert*—

- ‘(1) An individual is eligible to obtain a motor dealer’s licence only if—
- (a) the individual—
    - (i) is at least 18 years; and
    - (ii) has the educational or other qualifications for a motor dealer’s licence that may be prescribed under a regulation; and
  - (b) the individual satisfies the chief executive that the use, for the purpose of dealing in motor vehicles, of the place at which the individual proposes to carry on business as a motor dealer is authorised under the *Integrated Planning Act 1997*.’.
- (2) Section 44(2), ‘subsection (1)(b)’—  
*omit, insert—*  
‘subsection (1)(a)(ii)’.
- (3) Section 44(3)—  
*omit, insert—*
- ‘(3) A corporation is eligible to obtain a motor dealer’s licence only if the corporation satisfies the chief executive that—
- (a) a director of the corporation is a motor dealer; and
  - (b) the use, for the purpose of dealing in motor vehicles, of the place at which the corporation proposes to carry on business as a motor dealer is authorised under the *Integrated Planning Act 1997*.’.

## **10 Amendment of s 54 (Restriction—corporations)**

Section 54(1), from ‘performed by’ to ‘director’s licence.’—

*omit, insert—*

‘performed by—

- (a) a licensed director of the corporation under the director’s licence; or
- (b) a liquidator or controller appointed under the Corporations Act of property of the corporation; or

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

## **11 Amendment of s 74 (Immediate suspension)**

- (1) Section 74(1)(b) and (c)—  
*renumber* as section 74(1)(c) and (d).
- (2) Section 74(1)—  
*insert*—  
‘(b) the chief executive is satisfied a licensee who has been convicted of failing to file an audit report as required under section 402 continues, after the end of any appeal against the conviction, to fail to file the audit report; or’.
- (3) Section 74(4) and (5)—  
*renumber* as section 74(5) and (6).
- (4) Section 74(3)—  
*omit, insert*—  
‘(3) If the chief executive suspends a licence for a reason mentioned in subsection (1)(a), (c) or (d), the licence may be suspended for the period, of not more than 28 days, and on the conditions, the chief executive decides.
- ‘(4) If the chief executive suspends the licence for the reason mentioned in subsection (1)(b), the licence is suspended until whichever of the following happens first—  
(a) the licensee files the required audit report;  
(b) an application to the tribunal for the cancellation of the licence is heard and decided.’.
- (5) Section 74(6), as renumbered, penalty, ‘subsection (5)’—  
*omit, insert*—  
‘subsection (6)’.

## **12 Amendment of s 75 (Immediate cancellation)**

- Section 75(1)(c), ‘has gone into liquidation’—

*omit, insert—*

‘has been wound up or struck off under the Corporations Act’.

### **13 Insertion of new s 84A**

Chapter 3, part 3, after section 84—

*insert—*

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

- ‘(1) The chief executive may, by written notice given to an applicant for registration, require the applicant to give the chief executive information or material the chief executive reasonably considers is needed to consider the applicant’s application for the registration within a stated reasonable time.
- ‘(2) The applicant is taken to have withdrawn the application if the applicant fails to comply with the chief executive’s requirement within the stated reasonable time.’.

### **14 Amendment of s 88 (Criminal history is confidential document)**

Section 88(1), ‘An officer, employee or agent of the department’—

*omit, insert—*

‘A public service employee performing functions under this Act’.

### **15 Amendment of s 114 (Appointment of restricted letting agent)**

- (1) Section 114, heading, ‘restricted’—

*omit, insert—*

**‘resident’.**

- (2) Section 114(1)—

*omit, insert—*



- ‘(1) A resident letting agent must not act as a resident letting agent for a person (the *client*) to perform an activity (*service*) for the client unless—
- (a) the client first appoints the letting agent in writing under this section; or
  - (b) a previous appointment by the client is assigned to the letting agent under the terms of that appointment or under section 115A and the appointment is in force.
- Maximum penalty—200 penalty units.’.
- (3) Section 114(6), ‘restricted’—  
*omit, insert—*  
‘resident’.

## 16 Insertion of new s 115A

Chapter 4, part 2, division 2, after section 115—  
*insert—*

### ‘115A Assignment of appointments

- ‘(1) This section applies if a resident letting agent who holds appointments from clients to perform services for the clients under section 114 for a building complex proposes to assign the appointments to another person who is to become the resident letting agent for the complex (*proposed assignee*) without changing the terms of the appointment.
- ‘(2) However, this section does not apply to the assignment of an appointment if—
- (a) the terms of the appointment authorise the assignment of the appointment; and
  - (b) the assignment is made in accordance with the terms of the appointment.
- ‘(3) At least 14 days before the resident letting agent assigns the appointments, the letting agent must give each client written notice of the proposed assignment and obtain the client’s written approval to the assignment.
- ‘(4) The notice must state the following—

- (a) the proposed assignee's name;
  - (b) the appointments are to be assigned without changing the terms of the appointment;
  - (c) the client may agree or refuse to agree to the proposed assignment;
  - (d) when the proposed assignment is to take effect.
- '(5) If a client agrees to the assignment and the resident letting agent assigns the appointment under this section, the appointment is taken, for section 114, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.'

**17 Amendment of s 117 (Restriction on remedy for reward or expense)**

- (1) Section 117(1), (2) and (4), 'restricted'—

*omit, insert—*

'resident'.

- (2) Section 117—

*insert—*

- '(7) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a resident letting agent other than as provided by this section commits an offence.

Maximum penalty for subsection (7)—200 penalty units.'

**18 Amendment of s 118 (Excess fees etc. to be repaid)**

Section 118(1)(a)—

*omit, insert—*

- '(a) a person is convicted of an offence against section 116(2) or 117(7);<sup>2</sup> and'.

---

<sup>2</sup> Section 116 (Commission may be claimed only in relation to actual amounts) or 117 (Restriction on remedy for reward or expense)

## 19 Insertion of new s 124A

Chapter 4, part 3, after section 124—

*insert—*

### ‘124A Access to particular documents

- ‘(1) This section applies if a resident letting agent (*existing letting agent*)—
- (a) is a letting agent for a community titles scheme; and
  - (b) enters into a contract to sell management rights for the community titles scheme to another resident letting agent (*new letting agent*).
- ‘(2) At least 14 days before the day management rights are to pass to the buyer under the contract, the existing letting agent must make available to the new letting agent the existing letting agent’s trust account records for the community titles scheme to which the management rights relate for the prescribed period before the intended date of the sale of the management rights.
- ‘(3) If the existing letting agent fails to comply with subsection (2), the new letting agent may avoid the contract.
- ‘(4) In this section—

*community titles scheme* has the meaning given by the *Body Corporate and Community Management Act 1997*, section 10.

*letting agent* has the meaning given by the *Body Corporate and Community Management Act 1997*, section 16.

*management rights* has the meaning given by the *Body Corporate and Community Management Act 1997*, schedule 6.

*prescribed period* means—

- (a) 5 years; or
- (b) if the existing resident letting agent has been the letting agent for the community titles scheme for a shorter period, the shorter period.’.

**20 Amendment of s 132 (Licensee to be in charge of a real estate agent's business at a place)**

(1) Section 132(1), 'restricted'—

*omit, insert—*

'resident'.

(2) Section 132(2), 'restricted'—

*omit, insert—*

'resident'.

(3) Section 132(4)—

*omit, insert—*

'(4) It is not an offence against subsection (1) or (2) for a real estate agent who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.

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

'(6) In this section—

*resident letting agency* means a place of business at which the only business carried on as a real estate agent is the business of a resident letting agent.'

**21 Amendment of s 133 (Appointment of real estate agent—general)**

Section 133(1)—

*omit, insert—*

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

(a) the client first appoints the real estate agent in writing;  
or

- (b) a previous appointment by the client is assigned to the real estate agent under the terms of that appointment or under section 135A and the appointment is in force.

Maximum penalty—200 penalty units.’.

## 22 Amendment of s 135 (Appointment of real estate agent—sole and exclusive agencies)

Section 135(3)—

*omit, insert—*

- ‘(3) Subsection (1)(b) does not apply if the appointment—
- (a) is for the sale of 3 or more resident properties; or
- (b) is for the sale of a lot in a community titles scheme as part of the sale of management rights to the person who is to become the letting agent for the community titles scheme.

- ‘(4) In this section—

*community titles scheme* has the meaning given by the *Body Corporate and Community Management Act 1997*, section 10.

*letting agent* has the meaning given by the *Body Corporate and Community Management Act 1997*, section 16.

*management rights* has the meaning given by the *Body Corporate and Community Management Act 1997*, schedule 6.’.

## 23 Insertion of new s 135A

After section 135—

*insert—*

### ‘135A Proposal for assignment of appointments

- ‘(1) This section applies if a real estate agent who holds appointments from clients to perform services for the clients under section 133 proposes to assign the appointments to another real estate agent (*proposed assignee*) without changing the terms of the appointment.

- ‘(2) However, this section does not apply to the assignment of an appointment if—
- (a) the terms of the appointment authorise the assignment of the appointment; and
  - (b) the assignment is made in accordance with the terms of the appointment.
- ‘(3) At least 14 days before the real estate agent assigns the appointments, the agent must give each client written notice of the proposed assignment.
- ‘(4) The notice must state the following—
- (a) the proposed assignee’s name;
  - (b) the appointments are to be assigned without changing the terms of the appointment;
  - (c) the client may agree or refuse to agree to the proposed assignment;
  - (d) when the proposed assignment is to take effect.
- ‘(5) If a client agrees to the assignment and the real estate agent assigns the appointment under this section, the appointment is taken, for section 133, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.’.

**24 Amendment of s 140 (Restriction on recovery of reward or expense—no proper authorisation etc.)**

Section 140—

*insert—*

- ‘(2) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a real estate agent other than as provided by subsection (1) commits an offence.

Maximum penalty for subsection (2)—200 penalty units.’.

**25 Amendment of s 141 (Restriction on recovery of reward or expense above amount allowed)**

Section 141—

*insert—*

- ‘(6) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a real estate agent other than as provided by this section commits an offence.

Maximum penalty for subsection (6)—200 penalty units.’.

**26 Amendment of s 142 (Excess commission etc. to be repaid)**

Section 142(1)(a)—

*omit, insert—*

- ‘(a) a person is convicted of an offence against section 139(2), 140(2) or 141(6);<sup>3</sup> and’.

**27 Insertion of new s 145A**

After section 145—

*insert—*

**‘145A Return of beneficial interest if in form of commission**

- ‘(1) This section applies if—
- (a) a person is convicted of an offence against section 145(2) or (3);<sup>4</sup> and
  - (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an

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3 Section 139 (Commission may be claimed only in relation to actual amounts), 140 (Restriction on recovery of reward or expense—no proper authorisation etc.) or 141 (Restriction on recovery of reward or expense above amount allowed)

4 Section 145 (Beneficial interest—other than options)

activity an amount of commission to which the person was not entitled.

- ‘(2) The court must order the person to pay the amount to the client.
- ‘(3) The order must be made whether or not any penalty is imposed on the conviction.
- ‘(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.’.

**28 Amendment of s 153 (Notice to be given about sale of restricted letting agent’s business)**

- (1) Section 153, heading, ‘restricted’—  
*omit, insert—*  
**‘resident’.**
- (2) Section 153(1) and (3), ‘restricted’—  
*omit, insert—*  
**‘resident’.**
- (3) Section 153(5), penalty, ‘subsection (5)’—  
*omit, insert—*  
**‘subsection (6)’.**
- (4) Section 153(5), as amended—  
*renumber* as section 153(6).
- (5) Section 153—  
*insert—*
- ‘(5) Also, when giving the statement to the proposed buyer, the real estate agent must ask the proposed buyer to acknowledge that the proposed buyer has read the statement by signing and dating it.’.

**29 Amendment of s 160 (Acting as real estate agent)**

- (1) Section 160(4)(b) and (c)—



*renumber* as section 160(4)(c) and (d).

(2) Section 160(4)(a)—

*omit, insert*—

‘(a) a person does not act as a real estate agent only because the person, while performing duties as an employee of a real estate agent at the real estate agent’s registered office or other place of business—

(i) collects, and issues receipts for, rents; or

(ii) gives a person a list, prepared by or for the real estate agent, of premises available for rent; or

(iii) does something of an administrative nature in relation to a thing the real estate agent does as a real estate agent; and

(b) a person does not act as a real estate agent only because the person collects rents for the service provider for a residential service, as an employee of the service provider, if the rents are collected in the course of the conduct of the service; and’.

**30 Amendment of s 161 (Pretending to be real estate salesperson)**

Section 161(2)—

*omit, insert*—

‘(2) A person does not act as a real estate salesperson only because the person, while performing duties as an employee of a real estate agent at the real estate agent’s registered office or other place of business—

(a) collects, and issues receipts for, rents; or

(b) gives a person a list, prepared by or for the real estate agent, of premises available for rent; or

(c) does something of an administrative nature in relation to a thing the real estate agent does as a real estate agent.’.

### **31 Amendment of s 163 (Production of licence)**

(1) Section 163, heading, at the end—

*insert—*

**‘or registration certificate’.**

(2) Section 163—

*insert—*

‘(2) A real estate salesperson must, if asked by a person with whom the salesperson is dealing, produce the salesperson’s registration certificate for inspection by the person.

Maximum penalty—100 penalty units.’.

### **32 Amendment of s 172 (Licensee to be in charge of pastoral house’s business at a place)**

Section 172—

*insert—*

‘(3) It is not an offence against subsection (1) or (2) for an individual who is a pastoral house director, pastoral house manager or real estate agent to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.

‘(4) For subsection (3), land is *contiguous* with other land only if the parcels of land have a common boundary that is not separated by a public road.’.

### **33 Amendment of s 173 (Appointment of pastoral house—general)**

Section 173(1)—

*omit, insert—*

‘(1) A pastoral house must not act as a pastoral house for a person (*client*) to perform an activity (*service*) for the client unless—

(a) the client first appoints the pastoral house in writing under this section; or

- (b) a previous appointment by the client is assigned to the pastoral house under the terms of that appointment or under section 175A and the appointment is in force.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or
- (b) for a pastoral house—1000 penalty units.’.

### **34 Insertion of new s 175A**

After section 175—

*insert—*

#### **‘175A Proposal for assignment of appointments**

- ‘(1) This section applies if a pastoral house that holds appointments from clients to perform services for the clients under section 173 proposes to assign the appointments to another pastoral house (*proposed assignee*) without changing the terms of the appointment.
- ‘(2) However, this section does not apply to the assignment of an appointment if—
  - (a) the terms of the appointment authorise the assignment of the appointment; and
  - (b) the assignment is made in accordance with the terms of the appointment.
- ‘(3) At least 14 days before the pastoral house assigns the appointments, the pastoral house must give each client written notice of the proposed assignment.
- ‘(4) The notice must state the following—
  - (a) the proposed assignee’s name;
  - (b) the appointments are to be assigned without changing the terms of the appointment;
  - (c) the client may agree or refuse to agree to the proposed assignment;

(d) when the proposed assignment is to take effect.

- ‘(5) If the client agrees to the assignment and the pastoral house assigns the appointment under this section, the appointment is taken, for section 173, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.’.

**35 Amendment of s 179 (Restriction on recovery of reward or expense—no proper authorisation)**

Section 179—

*insert—*

- ‘(2) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a pastoral house other than as provided by subsection (1) commits an offence.

Maximum penalty for subsection (2)—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or
- (b) for a pastoral house—1000 penalty units.’.

**36 Amendment of s 180 (Restriction on recovery of reward or expense above amount allowed)**

Section 180—

*insert—*

- ‘(6) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a pastoral house other than as provided by this section commits an offence.

Maximum penalty for subsection (6)—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 591—200 penalty units; or
- (b) for a pastoral house—1000 penalty units.’.

**37 Amendment of s 181 (Excess commission etc. to be repaid)**

Section 181(1)(a)—

*omit, insert—*

‘(a) a person is convicted of an offence against section 178(2), 179(2) or 180(6);<sup>5</sup> and’.

**38 Insertion of new s 184A**

After section 184—

*insert—*

**‘184A Return of beneficial interest if in form of commission**

‘(1) This section applies if—

(a) a person is convicted of an offence against section 184(2) or (3);<sup>6</sup> and

(b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an activity an amount of commission to which the person was not entitled.

‘(2) The court must order the person to pay the amount to the client.

‘(3) The order must be made whether or not any penalty is imposed on the conviction.

‘(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.’.

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5 Section 178 (Commission may be claimed only in relation to actual amounts), 179 (Restriction on recovery of reward or expense—no proper authorisation etc.) or 180 (Restriction on recovery of reward or expense above amount allowed)

6 Section 184 (Beneficial interest—other than options)

### **39 Amendment of s 203 (Production of licence)**

- (1) Section 203, heading, at the end—  
*insert—*  
**‘or registration certificate’.**
- (2) Section 203(2)—  
*renumber* as section 203(3).
- (3) Section 203—  
*insert—*  
**‘(2) A pastoral house salesperson must, if asked by a person with whom the salesperson is dealing, produce the salesperson’s registration certificate for inspection by the person.  
Maximum penalty—100 penalty units.’.**

### **40 Amendment of s 210 (Appointment of auctioneer—general)**

- Section 210(1)—  
*omit, insert—*
- ‘(1) An auctioneer who is asked by a person (*client*) to perform an activity (*service*) for the client must not act for the client unless—
    - (a) the client first appoints the auctioneer in writing under this section; or
    - (b) a previous appointment by the client is assigned to the auctioneer under the terms of the appointment or under section 212A and the appointment is in force.  
Maximum penalty—200 penalty units.’.

### **41 Insertion of new s 212A**

- After section 212—  
*insert—*

### **‘212A Proposal for assignment of appointments**

- ‘(1) This section applies if an auctioneer who holds appointments from clients to perform services for the clients under section 210 proposes to assign the appointments to another auctioneer (*proposed assignee*) without changing the terms of the appointment.
- ‘(2) However, this section does not apply to the assignment of an appointment if—
  - (a) the terms of the appointment authorise the assignment of the appointment; and
  - (b) the assignment is made in accordance with the terms of the appointment.
- ‘(3) At least 14 days before the auctioneer assigns the appointments, the auctioneer must give each client written notice of the proposed assignment.
- ‘(4) The notice must state the following—
  - (a) the proposed assignee’s name;
  - (b) that the appointments are to be assigned without changing the terms of the appointment;
  - (c) the client may agree or refuse to agree to the proposed assignment;
  - (d) when the proposed assignment is to take effect.
- ‘(5) If the client agrees to the assignment and the auctioneer assigns the appointment under this section, the appointment is taken, for section 210, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.’.

### **42 Amendment of s 217 (Restriction on recovery of reward or expense—no proper authorisation etc.)**

Section 217—

*insert—*

- ‘(2) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as an auctioneer other than as provided by subsection (1) commits an offence.  
Maximum penalty for subsection (2)—200 penalty units.’

**43 Amendment of s 218 (Restriction on recovery of reward or expense above amount allowed)**

Section 218—

*insert—*

- ‘(6) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as an auctioneer other than as provided by this section commits an offence.  
Maximum penalty for subsection (6)—200 penalty units.’

**44 Amendment of s 219 (Excess commission etc. to be repaid)**

Section 219(1)(a)—

*omit, insert—*

- ‘(a) a person is convicted of an offence against section 216(2), 217(2) or 218(6);<sup>7</sup> and’.

**45 Insertion of new s 222A**

After section 222—

*insert—*

**‘222A Return of beneficial interest if in form of commission**

- ‘(1) This section applies if—  
(a) a person is convicted of an offence against section 222(2) or (3);<sup>8</sup> and

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<sup>7</sup> Section 216 (Commission may be claimed only in relation to actual amounts), 217 (Restriction on recovery of reward or expense—no proper authorisation etc.) or 218 (Restriction on recovery of reward or expense above amount allowed)

<sup>8</sup> Section 222 (Beneficial interest—other than options)



- (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an activity an amount of commission to which the person was not entitled.
- ‘(2) The court must order the person to pay the amount to the client.
- ‘(3) The order must be made whether or not any penalty is imposed on the conviction.
- ‘(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.’.

**46 Amendment of s 236 (Meaning of *warranty period*)**

Section 236(3)(a), ‘section 244(1)’—

*omit, insert—*

‘section 244’.

**47 Amendment of s 238 (Particular vehicles without statutory warranty to be identified when offered for sale)**

- (1) Section 238, heading—

*omit, insert—*

**‘238 Unwarranted and restorable vehicles to be identified when offered for sale’.**

- (2) Section 238—

*insert—*

- ‘(2) Also, an auctioneer may advertise or display for sale a restorable vehicle only if it is advertised or displayed for sale in the way prescribed under a regulation.

Maximum penalty—100 penalty units.

- ‘(3) This section does not apply to an unwarranted vehicle that is a caravan, a commercial vehicle or a motorcycle.’.

#### **48 Insertion of new s 238A**

After section 238—

*insert—*

#### **‘238A Bidders to register for auction of restorable vehicles**

- ‘(1) Before a restorable vehicle is offered for sale, an auctioneer must invite persons intending to bid for the vehicle when it is offered for sale to register as bidders (*registered bidders*) for the sale.
- ‘(2) The auctioneer must also inform potential bidders that by registering as a bidder, the person agrees to purchase the restorable vehicle on the condition that the person is taken to waive its statutory warranty when the contract for its purchase is entered into.’.

#### **49 Amendment of s 239 (Announcements before auction)**

Section 239—

*insert—*

- ‘(3) Also, an auctioneer must announce, immediately before the auction of any restorable vehicle—
  - (a) that the vehicle is a restorable vehicle because it is more than 20 years old and is for sale for restoration; and
  - (b) that it is a condition of the sale of a restorable vehicle that if the vehicle is sold, the registered bidder to whom it is sold is taken to waive the statutory warranty for the vehicle when the contract for its purchase is entered into; and
  - (c) that the auctioneer will not accept bids from a person who is not a registered bidder.

Maximum penalty—100 penalty units.

- ‘(4) An auctioneer does not contravene subsection (3) if—
  - (a) 2 or more restorable vehicles are to be auctioned in consecutive lots; and
  - (b) immediately before the first of the vehicles in the consecutive lots is to be auctioned, the auctioneer

identifies the vehicles and announces that it is a condition of each of the sales that a registered bidder who purchases the vehicle is taken to waive its statutory warranty when the contract for its purchase is entered into.’.

**50 Insertion of new s 239A**

After section 239—

*insert—*

**‘239A Effect of sale of restorable vehicle to registered bidder**

‘If a restorable vehicle is sold to a registered bidder at auction, the statutory warranty for the vehicle stops having effect when the contract for its purchase is entered into and the vehicle is taken, for section 241, to be an unwarranted vehicle.’.

**51 Amendment of s 241 (Auctioneer to give buyer notice about statutory warranty)**

Section 241(2), after ‘unwarranted vehicle’—

*insert—*

‘or a restorable vehicle that is taken under section 239A to be an unwarranted vehicle’.

**52 Amendment of s 243 (Defects not covered by statutory warranty)**

(1) Section 243(a)—

*omit.*

(2) Section 243(b) and (c)—

*renumber* as section 243(a) and (b).

(3) Section 243—

*insert—*

‘(c) a defect in something else prescribed by regulation.’.

**53 Amendment of s 244 (Buyer's obligations under statutory warranty)**

(1) Section 244(1)—

*omit, insert—*

‘(1) If the buyer of a warranted vehicle believes the vehicle has a defect the warrantor of the vehicle is obliged to repair under this part, the buyer must give the warrantor written notice of the defect (*defect notice*) before the end of the warranty period and—

(a) if the warranted vehicle is 200km or less from the warrantor's place of business when the defect notice is given, deliver the warranted vehicle to—

(i) the warrantor to repair the defect; or

(ii) a qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect; or

(b) if the warranted vehicle is more than 200km from the warrantor's place of business when the defect notice is given—

(i) deliver the warranted vehicle to the qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle and nearest to the vehicle to repair the defect; or

(ii) deliver, at the warrantor's expense, the warranted vehicle to another qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect.’

(2) Section 244(2), ‘or the person’—

*omit, insert—*

‘or the qualified repairer’.

(3) Section 244(3), ‘subsection (1)(b)(ii)’—

*omit, insert—*

‘subsection (1)(a)(ii)’.

(4) Section 244(4)—

*insert—*

‘**qualified repairer**, in relation to a warranted vehicle the subject of a defect notice, means a person who is, or holds the qualifications necessary to be appointed under the *Transport Operations (Road Use Management) Act 1995*, section 21<sup>9</sup> to be, an accredited person to perform vehicle safety inspections for the vehicle.’.

**54 Amendment of s 245 (Warrantor to record particulars of extension of warranty period)**

Section 245, ‘delivered under section 244(1)(b)’—

*omit, insert—*

‘delivered to the warrantor or nominated qualified repairer under section 244’.

**55 Amendment of s 247 (Warrantor’s obligation to repair defects)**

Section 247(3)—

*omit, insert—*

- ‘(3) If the warrantor nominates a qualified repairer to repair the vehicle, the warrantor must advise the buyer of the qualified repairer’s name and the address where the defect is to be repaired.’.

**56 Amendment of s 259 (Production of licence)**

- (1) Section 259, heading, at the end—

*insert—*

‘**or registration certificate**’.

- (2) Section 259—

*insert—*

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<sup>9</sup> *Transport Operations (Road Use Management) Act 1995*, section 21 (Appointment of accredited persons)

- ‘(2) A trainee auctioneer must, if asked by a person with whom the trainee is dealing, produce the trainee’s registration certificate for inspection by the person.

Maximum penalty—100 penalty units.’.

**57 Amendment of s 279 (What a motor dealer’s licence authorises)**

- (1) Section 279(1)(e)—

*omit, insert—*

‘(e) to acquire used motor vehicles, whether or not as complete units, to break up for sale as parts;’.

- (2) Section 279(1)(f), ‘as complete units or’—

*omit.*

**58 Amendment of s 283 (Licensee to be in charge of motor dealer’s business at a place)**

Section 283—

*insert—*

- ‘(4) It is not an offence against this section for a motor dealer who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.

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

**59 Insertion of new s 283A**

Chapter 9, part 2, division 1, after section 283—

*insert—*

**‘283A Motor dealer dealing in motor vehicles**

- ‘(1) A motor dealer who is performing an activity the motor dealer is authorised under section 279(1) to perform in relation to a

used motor vehicle is taken to be performing the activities of a motor dealer whether or not—

- (a) the motor dealer is the registered operator, as defined under the *Transport Operations (Road Use Management) Act 1995*, of the motor vehicle; or
  - (b) the motor dealer or the motor dealer's associate used the motor vehicle for private purposes.
- ‘(2) The motor dealer must disclose to a potential buyer or seller of a vehicle that the licensee is a licensed motor dealer.  
Maximum penalty—400 penalty units.
- ‘(3) Also, if a person agrees to purchase a motor vehicle from, or sell a motor vehicle to, the motor dealer, the person must sign a written acknowledgement stating the motor dealer disclosed to the person that the licensee is a licensed motor dealer.’.

**60 Amendment of s 284 (Appointment—sale on consignment)**

Section 284(1)—

*omit, insert—*

- ‘(1) A motor dealer must not act as a motor dealer for a person (*client*) to sell the client's motor vehicle on consignment unless—
- (a) the client first appoints the motor dealer in writing under this section; or
  - (b) a previous appointment is assigned to the motor dealer under the terms of the appointment or under section 285A and the appointment is in force.

Maximum penalty—200 penalty units.’.

**61 Insertion of new s 285A**

After section 285—

*insert—*

### **‘285A Proposal for assignment of appointments**

- ‘(1) This section applies if a motor dealer who holds appointments from clients to sell motor vehicles on consignment under section 284 proposes to assign the appointments to another motor dealer (*proposed assignee*) without changing the terms of the appointment.
- ‘(2) However, this section does not apply to the assignment of an appointment if—
  - (a) the terms of the appointment authorise the assignment of the appointment; and
  - (b) the assignment is made in accordance with the terms of the appointment.
- ‘(3) At least 14 days before the motor dealer assigns the appointments, the motor dealer must give each client written notice of the proposed assignment.
- ‘(4) The notice must state the following—
  - (a) the proposed assignee’s name;
  - (b) that the appointments are to be assigned without changing the terms of the appointment;
  - (c) the client may agree or refuse to agree to the proposed assignment;
  - (d) when the proposed assignment is to take effect.
- ‘(5) If the client agrees to the assignment and the motor dealer assigns the appointment under this section, the appointment is taken, for section 285, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.’.

### **62 Amendment of s 288 (Restriction on remedy for reward or expense)**

Section 288—

*insert—*



- ‘(2) A person who sues for, or recovers or retains, a reward or expense for a sale of a motor vehicle other than as provided by subsection (1) commits an offence.

Maximum penalty for subsection (2)—200 penalty units.’.

**63 Amendment of s 289 (Excess commission etc. to be repaid)**

Section 289(1)(a)—

*omit, insert—*

- ‘(a) a person is convicted of an offence against section 287(2) or 288(2);<sup>10</sup> and’.

**64 Insertion of new s 292A**

Chapter 9, part 2, division 4, after section 292—

*insert—*

**‘292A Return of beneficial interest if in form of commission**

- ‘(1) This section applies if—
- (a) a person is convicted of an offence against section 292(2) or (3);<sup>11</sup> and
  - (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an activity an amount of commission to which the person was not entitled.
- ‘(2) The court must order the person to pay the amount to the client.
- ‘(3) The order must be made whether or not any penalty is imposed on the conviction.

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10 Section 287 (Commission may be claimed only in relation to actual amounts) or 288 (Restriction on remedy for reward or expense)

11 Section 292 (Beneficial interest—other than options)

- ‘(4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.’.

**65 Amendment of s 316 (Particular vehicles without statutory warranty to be identified when offered for sale)**

- (1) Section 316, heading—

*omit, insert—*

**‘316 Unwarranted and restorable vehicles to be identified when offered for sale’.**

- (2) Section 316—

*insert—*

- ‘(2) Also, a motor dealer may advertise or display for sale a restorable vehicle only if it is advertised or displayed for sale in the way prescribed under a regulation.

Maximum penalty—100 penalty units.

- ‘(3) This section does not apply to an unwarranted vehicle that is a caravan, a commercial vehicle or a motorcycle.’.

**66 Insertion of new s 316A**

After section 316—

*insert—*

**‘316A Waiver of statutory warranty for restorable vehicles**

- ‘(1) A motor dealer must, before a proposed buyer enters into a contract for the purchase of a restorable vehicle, give the proposed buyer a written notice stating that the buyer may waive the statutory warranty for the vehicle.

- ‘(2) If the proposed buyer agrees to purchase the vehicle, the proposed buyer may waive the statutory warranty for the vehicle by signing the notice before the proposed buyer enters into a contract for the sale of the vehicle.

- ‘(3) The notice must clearly identify the vehicle to which it relates.

- ‘(4) On the signing of the notice, the proposed buyer is taken to waive the statutory warranty for the vehicle when the contract for its purchase is entered into.’.

**67 Amendment of s 317 (Motor dealer to give proposed buyer notice about statutory warranty)**

Section 317(2), ‘a unwarranted vehicle’—

*omit, insert—*

‘an unwarranted vehicle, or a restorable vehicle for which the proposed buyer has signed a notice waiving the statutory warranty under section 316A.’.

**68 Amendment of s 319 (Defects not covered by statutory warranty)**

- (1) Section 319(a)—

*omit.*

- (2) Section 319(b) and (c)—

*renumber* as section 319(a) and (b).

- (3) Section 319—

*insert—*

‘(c) a defect in something else prescribed by regulation.’.

**69 Amendment of s 320 (Buyer’s obligations under statutory warranty)**

- (1) Section 320(1)—

*omit, insert—*

- ‘(1) If the buyer of a warranted vehicle believes the vehicle has a defect the warrantor of the vehicle is obliged to repair under this part, the buyer must give the warrantor written notice of the defect (*defect notice*) before the end of the warranty period and—

- (a) if the warranted vehicle is 200km or less from the warrantor's place of business when the defect notice is given, deliver the vehicle to—
    - (i) the warrantor to repair the defect; or
    - (ii) a qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect; or
  - (b) if the warranted vehicle is more than 200km from the warrantor's place of business when the defect notice is given—
    - (i) deliver the warranted vehicle to the qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle and nearest to the vehicle to repair the defect; or
    - (ii) deliver, at the warrantor's expense, the warranted vehicle to another qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect.'.
- (2) Section 320(2), 'or the person'—  
*omit, insert—*  
'or the qualified repairer'.
- (3) Section 320(3), 'subsection (1)(b)(ii)'—  
*omit, insert—*  
'subsection (1)(a)(ii)'.
- (4) Section 320(4)—  
*insert—*  
**'qualified repairer'**, in relation to a warranted vehicle the subject of a defect notice, means a person who is, or holds the qualifications necessary to be appointed under the *Transport Operations (Road Use Management) Act 1995*, section 21<sup>12</sup> to

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12 *Transport Operations (Road Use Management) Act 1995*, section 21 (Appointment of accredited persons)

be, an accredited person to perform vehicle safety inspections for the vehicle.’.

**70 Amendment of s 321 (Warrantor to record particulars of extension of warranty period)**

Section 321, ‘delivered under section 320(1)(b)’—

*omit, insert—*

‘delivered to the warrantor or nominated qualified repairer under section 320’.

**71 Replacement of s 327 (Motor dealer must notify chief executive of change in place of business etc.)**

Section 327—

*omit, insert—*

**‘327 Motor dealer must notify chief executive of change in place of business etc.**

‘(1) A motor dealer who is a principal licensee must, if the motor dealer changes the place where the motor dealer carries on the motor dealer’s principal place of business—

(a) notify the chief executive in the approved form of the change within 14 days after the change; and

(b) when notifying the chief executive of the change, give the chief executive a copy of a document providing evidence of the lawfulness of the use of the place for the purposes of a motor dealer under the *Integrated Planning Act 1997*.

Maximum penalty—200 penalty units.

‘(2) A motor dealer who is a principal licensee must notify the chief executive in the approved form of the closure of any place where the dealer carries on business within 14 days after the closure.

Maximum penalty—200 penalty units.

‘(3) A motor dealer who is a principal licensee must—

- (a) notify the chief executive in the approved form of the opening of any place where the dealer carries on business within 14 days after the opening; and
- (b) when notifying the chief executive of the opening of the place, give the chief executive a copy of a document providing evidence of the lawfulness of the use of the place for the purposes of a motor dealer under the *Integrated Planning Act 1997*.

Maximum penalty—200 penalty units.

- ‘(4) A motor dealer who is an employed licensee must notify the chief executive in the approved form of any change in the motor dealer’s business address within 14 days after the change.

Maximum penalty—200 penalty units.’.

## **72 Amendment of s 334 (Acting as motor dealer)**

Section 334(1), penalty, ‘200’—

*omit, insert—*

‘400’.

## **73 Amendment of s 337 (Production of licence)**

- (1) Section 337, heading, at the end—

*insert—*

**‘or registration certificate’.**

- (2) Section 337—

*insert—*

- ‘(2) A motor salesperson must, if asked by a person with whom the salesperson is dealing, produce the salesperson’s registration certificate for inspection by the person.

Maximum penalty—100 penalty units.’.

**74 Amendment of s 343 (Licensee to be in charge of commercial agent's business at a place)**

Section 343—

*insert—*

- ‘(4) It is not an offence against subsection (1) or (2) for a commercial agent who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.
- ‘(5) For subsection (4), land is *contiguous* with other land only if the parcels of land have a common boundary that is not separated by a public road.’.

**75 Amendment of s 344 (Appointment of commercial agent)**

Section 344(1)—

*omit, insert—*

- ‘(1) A commercial agent must not act as a commercial agent for a person (*client*) to perform an activity (*service*) for the client unless—
- (a) the client appoints the agent in writing under this section; or
- (b) a previous appointment has been assigned to the agent under the terms of the appointment or under section 345A and the appointment is in force.

Maximum penalty—200 penalty units.’.

**76 Insertion of new s 345A**

Chapter 10, part 2, division 2, after section 345—

*insert—*

**‘345A Proposal for assignment of appointments**

- ‘(1) This section applies if a commercial agent who holds appointments from clients to perform services for the clients under section 344 proposes to assign the appointments to

another commercial agent (*proposed assignee*) without changing the terms of the appointment.

- ‘(2) However, this section does not apply to the assignment of an appointment if—
- (a) the terms of the appointment authorise the assignment of the appointment; and
  - (b) the assignment is made in accordance with the terms of the appointment.
- ‘(3) At least 14 days before the commercial agent assigns the appointments, the commercial agent must give each client written notice of the proposed assignment.
- ‘(4) The notice must state the following—
- (a) the proposed assignee’s name;
  - (b) that the appointments are to be assigned without changing the terms of the appointment;
  - (c) the client may agree or refuse to agree to the proposed assignment;
  - (d) when the proposed assignment is to take effect.
- ‘(5) If the client agrees to the assignment and the commercial agent assigns the appointment under this section, the appointment is taken, for section 344, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.’.

**77 Amendment of s 346 (Restriction on remedy for reward or expense)**

Section 346—

*insert—*

- ‘(2) A person who sues for, or recovers or retain, a reward or expense for the performance of an activity as a commercial agent other than as provided by subsection (1) commits an offence.

Maximum penalty for subsection (2)—200 penalty units.’.



**78 Amendment of s 357 (Production of licence)**

(1) Section 357, heading, at the end—

*insert—*

**‘or registration certificate’.**

(2) Section 357—

*insert—*

‘(2) A commercial subagent must, if asked by a person with whom the subagent is dealing, produce the subagent’s registration certificate for inspection by the person.

Maximum penalty—100 penalty units.’.

**79 Amendment of s 364 (Definitions for ch 11)**

Section 364, definition *cooling-off period*, as an example—

*insert—*

*‘Example—*

Assume a contract is entered into at any time on Monday and the buyer is bound by the contract. Assume also that the cooling-off period is not affected by public holidays. The cooling-off period ends at 5p.m. on Friday.’.

**80 Amendment of s 385 (Permitted drawings from trust accounts)**

After section 385(2)(b), as an example—

*insert—*

*‘Example of when transaction is finalised—*

the settlement of a contract for the sale of property or the termination of the contract’.

**81 Amendment of s 407 (Audit reports)**

Section 407(1), after ‘report’—

*insert—*

**‘under this section’.**

**82 Amendment of s 417 (When receiver may be appointed)**

Section 417(2)(e), after ‘cancellation’—

*insert—*

‘or suspension’.

**83 Amendment of s 573 (Wrongful conversion and false accounts)**

Section 573(3), ‘in the licensee’s trust account’—

*omit, insert—*

‘belonging to someone else’.

**84 Insertion of new ss 574A–574D**

After section 574—

*insert—*

**‘574A Representation of price of property to seller—auctioneer**

‘(1) This section applies if a person wanting to sell residential property (*seller*) asks an auctioneer for information about the price at which residential property that is to be, or may be, offered for sale by auction (*offered property*) is likely to be sold if it is sold by auction.

‘(2) The auctioneer must give the seller a written notice stating that if the seller does not set a price at which the seller agrees to sell the offered property (*reserve price*), the offered property will be sold for the price offered by the highest of any bids made when the property is auctioned.

Maximum penalty—200 penalty units.

‘(3) If the seller appoints the auctioneer to sell the offered property, the auctioneer must obtain from the seller before the offered property is auctioned a written notice stating the following—

(a) if the seller sets a reserve price—the reserve price;

- (b) if the seller does not set a reserve price—that the seller understands that the offered property will be sold for the highest of any bids made when the offered property is auctioned.

Maximum penalty—200 penalty units.

- ‘(4) An auctioneer must not help a seller decide the reserve price for offered property unless, before the seller decides the price, the auctioneer gives the seller—
  - (a) a copy of a comparative market analysis for the offered property; or
  - (b) if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the auctioneer decided the market value of the property.

Maximum penalty—540 penalty units.

- ‘(5) In this section—

*comparative market analysis*, for an offered property, means a document comparing the offered property with at least 3 properties sold within the previous 6 months that are of a similar standard or condition to the offered property and are within 5km of that property.

#### **‘574B Auctioneer not to indicate reserve or other price to bidder**

- ‘(1) This section applies if a person (*bidder*) wanting to bid for residential property that is to be, or may be, offered for sale by auction (*offered property*) asks an auctioneer for information about the price at which the offered property is likely to be sold when it is auctioned.
- ‘(2) The auctioneer must not in any way disclose to the bidder—
  - (a) whether the seller has set a reserve price for the offered property under section 574A; or
  - (b) the reserve price set under section 574A for the offered property; or

- (c) an amount the auctioneer considers is a price likely to result in a successful or acceptable bid for the offered property.

Maximum penalty—540 penalty units.

- ‘(3) However, the auctioneer does not commit an offence against subsection (2) if, on the seller’s written instructions, the auctioneer gives the bidder whichever of the following was given to the seller—
  - (a) the comparative market analysis for the offered property;
  - (b) the written explanation showing how the auctioneer decided the market value of the property.
- ‘(4) In this section—  
*comparative market analysis*, for offered property, see section 574A.

#### **‘574C Representation of price of property—real estate agent**

- ‘(1) This section applies if a person wanting to sell residential property asks a real estate agent for information about the price at which residential property that is to be, or may be, offered for sale, whether or not by auction, (*offered property*) is likely to be sold.
- ‘(2) If the real estate agent decides to give the person the information, the real estate agent must, when giving the person the information, give the person—
  - (a) a copy of a comparative market analysis for the offered property; or
  - (b) if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the real estate agent decided the market value of the property.

Maximum penalty—540 penalty units.

- ‘(3) In this section—

*comparative market analysis*, for offered property, see section 574A.

**‘574D Real estate agent not to indicate reserve price to potential buyer**

- ‘(1) This section applies if a person wanting to buy residential property (*potential buyer*) asks a real estate agent for information about the price at which residential property that is to be, or may be, offered for sale, whether or not by auction, (*offered property*) is likely to be sold or is, or is likely to be, offered for sale.
- ‘(2) If the offered property is to be offered for sale by auction, the real estate agent must not disclose to the potential buyer—
- (a) whether the seller has set a reserve price for the offered property; or
  - (b) the reserve price set for the offered property; or
  - (c) an amount the real estate agent considers is a price likely to result in a successful or acceptable bid for the offered property.

Maximum penalty—540 penalty units.

- ‘(3) If the property is not to be offered for sale by auction and the seller has instructed the real estate agent not to disclose the price at which the seller is willing to sell the offered property, the real estate agent must not disclose to the potential buyer the price at which the seller is willing to sell the offered property.

Maximum penalty—540 penalty units.

- ‘(4) However, the real estate agent does not commit an offence against subsection (2) or (3) if, on the seller’s written instructions, the real estate agent gives the potential buyer a copy of whichever of the following was given to the seller—
- (a) the comparative market analysis for the offered property;
  - (b) the written explanation showing how the real estate agent decided the market value of the property.

Maximum penalty—540 penalty units.

‘(5) In this section—

*comparative market analysis*, for offered property, see section 574A.’.

**85 Amendment of s 582 (False or misleading statements)**

Section 582(2), definition *official*—

*omit, insert*—

‘*official* means—

- (a) the chief executive; or
- (b) an inspector; or
- (c) a public service employee.’.

**86 Amendment of s 583 (False or misleading documents)**

Section 583(4), definition *official*—

*omit, insert*—

‘*official* means—

- (a) the chief executive; or
- (b) an inspector; or
- (c) a public service employee.’.

**87 Insertion of new ch 19, pt 7**

Chapter 19—

*insert*—

## **‘Part 7**

# **Transitional provisions for Property Agents and Motor Dealers and Other Acts Amendment Act 2006**

### **‘638 Exemption for liquidators, controllers and receivers**

- ‘(1) This section applies to the following persons—
- (a) a person, appointed under the Corporations Act before the commencement of this section, as a liquidator, or controller of property, of a corporation that is or was authorised under a licence to perform an activity;
  - (b) a person, appointed under this Act before the commencement of this section, as a receiver of an entity that is or was authorised under a licence to perform an activity.
- ‘(2) Section 5A, as in force from the commencement of this section, applies, and is taken always to have applied, to the functions the person performed before the commencement in relation to a business carried on under a licence under this Act.

### **‘639 Exemption—livestock sales**

‘Section 8, as in force immediately before the commencement of this section, continues to apply to a del credere agent and an agreement to which that section applied before the commencement as if the *Property Agents and Motor Dealers and Other Acts Amendment Act 2006*, section 6 had not been enacted.

### **‘640 References to restricted letting agents**

‘In an Act or document a reference to a restricted letting agent may, if the context permits, be taken to be a reference to a resident letting agent.

**‘641 Existing restricted letting agent licences**

- ‘(1) This section applies to a person who, immediately before the commencement of this section, held a property agents and motor dealers licence (restricted letting agent).
- ‘(2) The person is, on the commencement, taken to hold a property agents and motor dealers licence (resident letting agent).
- ‘(3) If the person held the licence immediately before the commencement subject to a restriction or condition, the licence the person is taken to hold on the commencement is also taken to be subject to a condition in the same terms, so far as practicable, as the restriction or condition.

**‘642 Existing eligibility requirements for motor dealer’s licence**

‘Section 44, as in force immediately before the commencement of this section, continues to apply to—

- (a) an application for a motor dealer’s licence made, but not decided, before the commencement; and
- (b) the consideration under section 57 of a motor dealer’s eligibility on an application for the renewal or restoration of the motor dealer’s licence if the licence was in force immediately before the commencement.

**‘643 Transitional provision for s 367**

- ‘(1) This section applies to a contract relating to a proposed lot under the *Land Sales Act 1984* that—
  - (a) was entered into before 1 December 2005; and
  - (b) did not have a warning statement attached to it as required under old section 366 because the warning statement, the information sheet and the contract were given to the buyer by electronic communication; and
  - (c) was not settled before the commencement of this section.
- ‘(2) The buyer under the contract may, after the commencement, terminate the relevant contract under old section 367 because



the warning statement was not attached as required under old section 366 by giving signed, dated notice of termination to the seller or the seller's agent, if the notice is given to the seller or the seller's agent before whichever of the following happens first—

- (a) the relevant contract settles;
- (b) the end of 1 month after the date of assent of the *Property Agents and Motor Dealers and Other Acts Amendment Act 2006*.

'(3) If the buyer does not terminate the contract as provided under subsection (2), the buyer's rights under old section 367 to terminate the contract for the reason mentioned in subsection (2) are extinguished.

'(4) In this section—

***electronic communication*** see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

***information sheet*** has the meaning given by the *Body Corporate and Community Management Act 1997*, section 213(5) as in force before 1 December 2005.

***old section 366*** means section 366 as in force before 1 December 2005.

***old section 367*** means section 367 as in force before 1 December 2005.'

## **88 Amendment of sch 2 (Dictionary)**

(1) Schedule 2, definitions *residential service*, *restricted letting agent*, *restricted letting agent's business* and *restricted letting agent's licence*—

*omit.*

(2) Schedule 2—

*insert—*

'***resident letting agent*** see section 111.

***resident letting agent's business*** see section 152.

***resident letting agent's licence*** means a property agents and motor dealers licence (resident letting agent).

***residential service*** see the *Residential Services (Accommodation) Act 2002*, schedule.

***restorable vehicle*** means a warranted vehicle that is more than 20 years old and is for sale for restoration.’

- (3) Schedule 2, definition *comparable licence*, paragraph (a), ‘restricted letting agent’s licence’—

*omit, insert—*

‘resident letting agent’s licence’.

- (4) Schedule 2, definition *employment register*, paragraph (a), ‘restricted’—

*omit, insert—*

‘resident’.

- (5) Schedule 2, definition *land*—

*insert—*

‘(d) an interest in land.’.

- (6) Schedule 2, definition *minor claim*, ‘\$5000’—

*omit, insert—*

‘\$10000’.

- (7) Schedule 2, definition *registered office*, paragraph (a), ‘restricted’—

*omit, insert—*

‘resident’.

- (8) Schedule 2, definition *used motor vehicle*, paragraph (a)(ii)—  
*renumber* as paragraph (a)(iii).

- (9) Schedule 2, definition *used motor vehicle*, paragraph (a)—

*insert—*

‘(ii) a motor vehicle that, had it not been registered as mentioned in subparagraph (i) for use for

demonstration or sales promotion, would have been a new motor vehicle; or’.

(10) Schedule 2, definition *warranted vehicle*, paragraph (a)(ii)—  
*omit.*

(11) Schedule 2, definition *warranted vehicle*, paragraph (a)(iii)—  
*renumber* as paragraph (a)(ii).

## **Part 3**                      **Amendment of other Acts**

### **89**      **Other Acts amended**

Schedule 2 amends the Acts it mentions.

**Schedule 1**      **Minor and consequential  
amendments of Property  
Agents and Motor Dealers Act  
2000**

section 3

**1**      **Long title, ‘restricted’—**

*omit, insert—*

‘resident’.

**2**      **Sections 9(2), 10(1), 20(a), 35, 46(a), 47(a), 48A(a), 111,  
112, 113, 116, 119, 120(1) and (3), 121, 122, 123, 124, 125,  
126, 127 and 152, ‘restricted’—**

*omit, insert—*

‘resident’.

**3**      **Chapter 2, part 5, division 1, heading, chapter 4, heading,  
chapter 4, part 1, heading, sections 122, heading and 126,  
heading, ‘Restricted’—**

*omit, insert—*

‘Resident’.

**4**      **Section 237(2), after ‘238’—**

*insert—*

‘, 238A’.

**5**      **Section 532(2)(e)—**

*omit.*

Schedule 1 (continued)

- 6**      **Section 532(2)(f)—**  
*renumber* as section 532(2)(e).

## **Schedule 2      Other Acts amended**

section 89

### **Body Corporate and Community Management Act 1997**

#### **1      Chapter 8, after part 3—**

*insert—*

### **‘Part 3A                      Transitional provision for Property Agents and Motor Dealers and Other Acts Amendment Act 2006**

#### **‘354A Transitional provision for s 213**

- ‘(1) This section applies to a contract relating to a proposed lot under the *Land Sales Act 1984* that—
- (a) was entered into before 1 December 2005; and
  - (b) did not have an information sheet attached to it as required under old section 213(5)(b) because the warning statement, the information sheet and the contract were given to the buyer by electronic communication; and
  - (c) was not settled before the commencement of this section.
- ‘(2) The buyer under the contract may, after the commencement, cancel the relevant contract under old section 213(6) because the information sheet was not attached as required under old section 213(5)(b) by giving signed, dated notice of cancellation to the seller if the notice of cancellation is given to the seller before whichever of the following happens first—
- (a) the relevant contract settles;

### Schedule 2 (continued)

- (b) the end of 1 month after the date of assent of the *Property Agents and Motor Dealers and Other Acts Amendment Act 2006*.
- ‘(3) If the buyer does not cancel the contract as provided under subsection (2), the buyer’s rights under old section 213 to cancel the contract for the reason mentioned in subsection (2) are extinguished.
- ‘(4) In this section—
- electronic communication* see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.
- old section 213* means section 213 as in force before 1 December 2005.
- old section 213(5)(b)* means section 213(5)(b) as in force before 1 December 2005.
- old section 213(6)* means section 213(6) as in force before 1 December 2005.
- warning statement* has the meaning given by the *Property Agents and Motor Dealers Act 2000*, section 366(1) as in force before 1 December 2005.’.

## Building Units and Group Titles Act 1980

- 1 Section 39(3)(k), ‘restricted’—**  
*omit, insert—*  
‘resident’.
- 2 Section 53(14), ‘restricted’—**  
*omit, insert—*  
‘resident’.

Schedule 2 (continued)

**Business Names Act 1962**

**1 Section 25(1)(a), ‘1 year’—**

*omit, insert—*

‘1 calendar month’.

**Collections Act 1966**

**1 Section 29—**

*insert—*

‘(6) Also, subsection (4)(a) does not apply to a charity or an association if the charity’s or association’s constitution authorises the charity or association to distribute income and property among members who are themselves charities or associations, whether in Queensland or another State.’.

**Introduction Agents Act 2001**

**1 Section 96(4), definition *official*—**

*insert—*

‘(e) a public service employee.’.

**2 Section 97, from ‘to an officer’—**

*omit, insert—*

‘to an appropriately qualified public service employee.

‘(2) In this section—



### Schedule 2 (continued)

***appropriately qualified*** includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example—*

a person's classification level in the public service'.

## Land Sales Act 1984

### 1 Section 35, from 'to an officer'—

*omit, insert—*

'to an appropriately qualified public service employee.

'(2) In this section—

***appropriately qualified*** includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example—*

a person's classification level in the public service'.

## Partnership Act 1891

### 1 Section 52(1), ' , which notice complies with this Act,'—

*omit, insert—*

'in the approved form'.

### 2 Section 63(1), 'that complies with this chapter'—

*omit, insert—*

'in the approved form'.

Schedule 2 (continued)

- 3 Section 66(1), after ‘is not given’—**  
*insert—*  
‘in the approved form’.
- 4 Section 80(1), after ‘a certificate’—**  
*insert—*  
‘in the approved form’.
- 5 Section 80(2), after ‘a certificate’—**  
*insert—*  
‘in the approved form’.
- 6 Section 102(1), after ‘written notice’—**  
*insert—*  
‘in the approved form’.
- 7 Section 102(2), after ‘written notice’—**  
*insert—*  
‘in the approved form’.

**Second-hand Dealers And Pawnbrokers Act 2003**

- 1 Section 9(1), ‘An officer, employee or agent of the department’—**  
*omit, insert—*  
‘A public service employee’.

Schedule 2 (continued)

**2 Section 12(2), ‘application’—**

*omit, insert—*

‘licence’.

**3 Section 19(1)(d), after ‘no longer’—**

*insert—*

‘a’.

**4 Section 77(2)(b), ‘officers’—**

*omit, insert—*

‘officer’s’.

**5 Section 88(2)(f), example, ‘*Example of*’—**

*omit, insert—*

‘*Example for*’.

**6 Section 113—**

*omit, insert—*

**‘113 Officials not civilly liable**

‘(1) An official is not civilly liable for an act done, or omission made, honestly and on reasonable grounds under this Act.

‘(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

‘(3) In this section—

***official*** means—

(a) the chief executive; or

(b) an authorised officer; or

(c) a public service employee.’.

Schedule 2 (continued)

- 7 **Part 8, heading, ‘and consequential amendments’—**  
*omit.*
- 8 **Section 118, heading, ‘pt 8’—**  
*omit, insert—*  
**‘pt 9’.**
- 9 **Section 120(2)(a), after ‘conditions and restrictions’  
(second mention)—**  
*insert—*  
**‘to which’.**
- 10 **Schedule 3, definition *commencement*, after  
‘*commencement*’—**  
*insert—*  
**‘.’.**
- 11 **Schedule 3, definition *property register*, ‘section 53’—**  
*omit, insert—*  
**‘section 53(1)’.**

## **Security Providers Act 1993**

- 1 **Section 48(4)(b)—**  
*omit, insert—*  
**‘(b) the department’s public service employees;’.**

Schedule 2 (continued)

**2 Section 49(1), definition *official*—**

*insert—*

‘(d) a public service employee.’.

**3 Section 52, from ‘to an officer’—**

*omit, insert—*

‘to an appropriately qualified public service employee.

‘(2) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example—*

a person’s classification level in the public service’.

## **South Bank Corporation Act 1989**

**1 Schedule 4, section 39(3)(k), ‘restricted’—**

*omit, insert—*

‘resident’.

**2 Schedule 4, section 53(14), ‘restricted’—**

*omit, insert—*

‘resident’.

Schedule 2 (continued)

**Travel Agents Act 1988**

- 1 Section 8—**  
*omit.*