



Queensland

# **Debt Collectors (Field Agents and Collection Agents) Act 2014**

**Act No. 19 of 2014**





Queensland

# Debt Collectors (Field Agents and Collection Agents) Act 2014

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Queensland

## **Debt Collectors (Field Agents and Collection Agents) Act 2014**

**Act No. 19 of 2014**

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**An Act to comprehensively provide for the regulation of the activities and conduct of debt collectors and subagents and to protect consumers against particular undesirable practices, and to make minor and consequential amendments of this Act, the Fire and Rescue Service Act 1990 and the State Penalties Enforcement Act 1999 for particular purposes**

**[Assented to 21 May 2014]**

[s 1]

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## **The Parliament of Queensland enacts—**

# **Part 1 Preliminary**

## **Division 1 Introduction**

### **1 Short title**

This Act may be cited as the *Debt Collectors (Field Agents and Collection Agents) Act 2014*.

### **2 Commencement**

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

### **3 Act binds all persons**

- (1) This Act binds all persons, including the State, and, so far as the legislative power of Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State, the Commonwealth or any other State liable to be prosecuted for an offence.

### **4 Relationship with Fair Trading Inspectors Act 2014**

- (1) The *Fair Trading Inspectors Act 2014* enacts common provisions for this Act and particular other Acts about fair trading.
- (2) Unless this Act otherwise provides in relation to the *Fair Trading Inspectors Act 2014*, the powers that an inspector has under that Act are in addition to and do not limit any powers the inspector may have under this Act.

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## Division 2 Exemptions

### 5 Public officials

- (1) Section 30 does not apply to—
- (a) a bailiff serving a notice, claim, application, summons or other process; or
  - (b) a person, other than a debt collector, who is an enforcement officer or a member of the staff of the State Penalties Enforcement Registry under the *State Penalties Enforcement Act 1999*—
    - (i) collecting, or requesting payment of, debts; or
    - (ii) serving a notice, claim, application, summons or other process.

- (2) In this section—

*bailiff* means a bailiff appointed under the *Supreme Court of Queensland Act 1991*, the *District Court of Queensland Act 1967* or the *Magistrates Courts Act 1921*.

### 6 Administrators etc.

- (1) This section applies to the following persons (each an *appointee*)—
- (a) a person appointed under the Corporations Act as an administrator of a corporation that is or was authorised under a relevant authorisation to perform a regulated activity;
  - (b) a person appointed under the Corporations Act as an administrator of a deed of company arrangement for a corporation that is or was authorised under a relevant authorisation to perform a regulated activity;
  - (c) a person appointed under the Corporations Act as a liquidator, or controller of property, of a corporation that is or was authorised under a relevant authorisation to perform a regulated activity;

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- (d) a person appointed under the Administration Act as a receiver in relation to a person that is or was authorised under a relevant authorisation to perform a regulated activity;
  - (e) a person appointed as the trustee in bankruptcy for an individual who is or was authorised under a relevant authorisation to perform a regulated activity;
  - (f) an Official Receiver under the *Bankruptcy Act 1966* (Cwlth) exercising powers or performing functions under that Act in relation to an individual who is or was authorised under a relevant authorisation to perform a regulated activity.
- (2) The appointee is exempt from the prescribed provisions while performing the regulated activity in relation to any business that is or was authorised to be carried on under the relevant authorisation, in accordance with—
- (a) if the relevant authorisation is in force—any conditions applying to the authorisation; or
  - (b) if the relevant authorisation is not in force—any conditions applying to the authorisation when it stopped being in force.
- (3) However, if the appointee is appointed for a corporation that is or was authorised under a licence to perform a regulated activity, the appointee may only perform the activity if—
- (a) if there is a field agent in charge of the corporation’s regulated business—the activity may be performed by the agent; or
  - (b) if there is not a field agent in charge of the corporation’s regulated business—the activity may have been performed by the last field agent in charge of the corporation’s regulated business.
- (4) In this section—
- person appointed as the trustee in bankruptcy*, for an individual, means—

- 
- (a) the Official Trustee under the *Bankruptcy Act 1966* (Cwlth) if the Official Trustee is the trustee of the estate of the individual; or
  - (b) a person appointed under the *Bankruptcy Act 1966* (Cwlth) as the trustee of the estate of the individual.

***prescribed provisions*** means sections 21, 23, 25, 28 and 30.

***relevant authorisation*** means either of the following—

- (a) a licence;
- (b) an authorisation under part 2, division 3.

## **7 Financial institutions and trustee companies**

- (1) Part 3 does not apply to a financial institution or trustee company.
- (2) In this section—

***trustee company*** means—

- (a) a trustee company under the *Trustee Companies Act 1968*; or
- (b) the public trustee when the public trustee is—
  - (i) performing the activities that may be performed by a trustee company; or
  - (ii) exercising the powers that may be exercised by a trustee company; or
  - (iii) holding an office that may be held by a trustee company.

## **Division 3 Objects of Act**

### **8 Objects**

- (1) The objects of this Act are—

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- (a) to provide a system for the regulation of the activities and conduct of debt collectors and subagents that achieves an appropriate balance between—
    - (i) the need to regulate for the protection of consumers; and
    - (ii) the need to promote freedom of enterprise in the market place; and
  - (b) to provide a way of protecting consumers against particular undesirable practices associated with a regulated activity.
- (2) The objects are to be achieved mainly by—
- (a) ensuring—
    - (i) only suitable persons are authorised to engage in regulated activities; and
    - (ii) persons who carry on a regulated business or are in charge of a regulated business maintain supervision of the way the business is carried on; and
  - (b) providing—
    - (i) protection for consumers in their dealings with persons regulated under this Act; and
    - (ii) a legislative framework within which persons performing particular activities may lawfully operate; and
  - (c) regulating fees and commissions that can be charged for particular transactions; and
  - (d) providing increased flexibility in enforcement measures through injunctions and undertakings; and
  - (e) promoting administrative efficiency by providing that—
    - (i) responsibility for licensing rests with the chief executive; and
    - (ii) responsibility for reviewing particular decisions of the chief executive rests with QCAT; and



- (iii) responsibility for disciplining field agents and subagents, and dealing with collection agents in a similar way, rests with QCAT.

## Division 4 Interpretation

### 9 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

### 10 Meaning of *regulated activity* and related terms

- (1) A *regulated activity* is—
- (a) a debt collection activity; or
  - (b) a repossession activity; or
  - (c) a process serving activity.
- (2) A *debt collection activity* is the collecting of, or requesting payment of, debts.
- (3) A *repossession activity* is the finding, or repossessing, for a person of any goods or chattels that the person is entitled to repossess under an agreement.
- (4) A *process serving activity* is the serving of any writ, claim, application, summons or other process.

### 11 Meaning of *regulated business*

A *regulated business* is a business, or a part of a business, that involves the performance of a regulated activity.

### 12 Meaning of *in charge*

A person is *in charge* of a regulated business only if the person supervises, manages or controls the carrying on of the business.

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### **13 Meaning of *registered office***

A field agent's *registered office* is—

- (a) for a principal field agent—
  - (i) the place the agent states in the agent's application for a licence as the agent's principal place of business; or
  - (ii) another place notified to the chief executive by the agent in the approved form as the agent's principal place of business; or
- (b) for an employed field agent—
  - (i) the place the agent states in the agent's application for a licence as the agent's business address; or
  - (ii) another place notified to the chief executive by the agent in the approved form as the agent's business address.

## **Part 2 Authorisations**

### **Division 1 Licences**

#### **14 What a licence authorises**

- (1) A licence authorises the holder of the licence (a *field agent*) to perform the following activities as an agent for others for reward—
  - (a) a debt collection activity;
  - (b) a repossession activity;
  - (c) a process serving activity.
- (2) Subsection (1) is subject to any limitations imposed under a condition of the licence.

- (3) The field agent may perform the activities in the following capacities—
  - (a) in the carrying on of a regulated business, either alone or with others;
  - (b) as an employee of someone else.

## **15 Restrictions on corporations**

- (1) A corporation that holds a licence is authorised to perform a regulated activity under its licence only if the activity may be performed by a field agent in charge of the corporation's regulated business.
- (2) If the corporation performs a regulated activity it is not authorised to perform, it is taken to be a person who acts without an authorisation for the performance of the activity.

## **16 Restrictions on individuals**

- (1) An employed field agent who is an individual is authorised to perform a regulated activity authorised under the agent's licence only if the activity may also be performed by the agent's employer under the employer's licence.

*Example—*

E is a licensed employee of P, a principal field agent. E's licence is not subject to a condition. However, P's licence is subject to the condition that P only engage in the collection of debts. Because of the condition, E is only authorised to engage in the collection of debts under E's licence during E's employment with P and while P's licence is subject to the condition.

- (2) If the employed field agent performs a regulated activity the agent is not authorised to perform because of subsection (1), the agent is taken to be a person who acts as a person without an authorisation for the performance of the activity.

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## **17 Licence conditions**

- (1) This section applies to a field agent who performs a regulated activity that the agent is not authorised to perform because of a condition of the agent's licence.
- (2) The field agent is taken to be a person who acts as a person without an authorisation for the performance of the activity.

*Note—*

For the consequences of a field agent performing a regulated activity the agent is not authorised to perform under this division, see sections 26 and 30.

## **Division 2 Registration certificates**

### **18 What a registration certificate authorises**

- (1) A registration certificate authorises the holder of the certificate (a *subagent*) to perform any of the following activities that may be performed by the field agent who employs the subagent—
  - (a) a debt collection activity;
  - (b) a repossession activity;
  - (c) a process serving activity.
- (2) Subsection (1) is subject to any limitations imposed under a condition of the registration for which the certificate was issued.
- (3) The subagent may perform the activities only in the capacity of an employee of someone else.

## **Division 3 Automatic authorisations**

### **19 Automatic authorisation for limited debt collection activity**

- (1) A person may, as an agent for others for reward and without a

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licence or registration certificate, perform a debt collection activity but only—

- (a) to the extent the person does not engage in face-to-face communication with the debtor; and
  - (b) if the person is suitable to perform a debt collection activity under part 6.
- (2) The person may perform the debt collection activity in the following capacities—
- (a) in the carrying on of a regulated business, either alone or with others;
  - (b) as an employee of someone else.
- (3) A person performing a debt collection activity under the authority of this section is a *collection agent*.

## **20 Restriction on performing debt collection activity**

- (1) This section applies to a collection agent who performs a debt collection activity that the agent—
- (a) is not authorised to perform under section 19; or
  - (b) is not authorised to perform because of a condition imposed on the agent by QCAT under section 116(1)(e).
- (2) The collection agent is taken to be a person who acts as a person without an authorisation for the performance of the activity.

*Note—*

For the consequences of a collection agent performing an activity that the agent is not authorised to perform, see sections 26 and 30.

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## **Part 3                      Conduct**

### **Division 1                Responsibilities**

#### **21            Field agent to be in charge of regulated business**

- (1) A principal field agent who is an individual must be in charge of the agent's regulated business.

Maximum penalty—200 penalty units.

- (2) A principal field agent that is a corporation must ensure that the individual in charge of the agent's regulated business is a field agent.

Maximum penalty—

- (a) for an individual guilty of the offence under the Criminal Code, chapter 2—200 penalty units; or  
(b) for a corporation—1000 penalty units.

#### **22            Responsibility for acts and omissions of subagents**

- (1) A principal field agent must take reasonable steps to ensure each of the agent's employees who is a subagent is properly supervised and complies with this Act.

- (2) An employed field agent who is in charge of a regulated business must take reasonable steps to ensure each of the business's employees who are subagents is properly supervised and comply with this Act.

*Note—*

A contravention of subsection (1) or (2) is a ground for making an order against a field agent under section 116.

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## Division 2                      Appointment and engagement

### 23      **Appointment for debt collection or repossession activities**

- (1) A debt collector must not, for reward, perform a debt collection activity or repossession activity (*service*) for a client unless—
- (a) the client first appoints the collector under this section; or
  - (b) an appointment under this section that is in force is assigned to the collector under the terms of the appointment.

Maximum penalty—200 penalty units.

- (2) The appointment may be for the performance of—
- (a) a particular service (*single appointment*); or
  - (b) a number of services over a period (*continuing appointment*).
- (3) The appointment must be in writing and—
- (a) contain the particulars prescribed under a regulation; and
  - (b) state all of the following—
    - (i) the service to be performed by the debt collector and how it is to be performed;
    - (ii) the fees, charges and any commission payable for the service;
    - (iii) when the fees, charges and commission for the service become payable;
    - (iv) the expenses, including travelling expenses, the debt collector is authorised to incur in connection with—
      - (A) for a single appointment—the performance of the service; or

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- (B) for a continuing appointment—the performance of each service or category of service;
  - (v) the source and the estimated amount or value of any rebate, discount, commission or benefit that the debt collector may receive for any expenses the debt collector is authorised to incur in connection with the performance of the service;
  - (vi) any condition, limitation or restriction on the performance of the service.
- (4) A continuing appointment must also state—
    - (a) the date the appointment ends; and
    - (b) that the appointment may be revoked on the giving of 90 days notice, or the lesser period (of at least 30 days) agreed by the parties.
  - (5) The notice revoking a continuing appointment must be by signed writing given to the other party.
  - (6) The appointment must be signed and dated by the client and the debt collector or someone authorised or apparently authorised to sign for the collector.
  - (7) The debt collector must give a copy of the signed appointment to the client.

Maximum penalty—200 penalty units.

## **24 Form of appointment**

- (1) An appointment under section 23 must be in writing and contain any particulars that may be prescribed under a regulation.
- (2) An appointment under section 23 that does not comply with subsection (1) is ineffective from the time it is made.



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**25 Engagement for process serving activities**

A field agent must not perform a process serving activity for a client for reward (the *service*) unless the client has engaged the agent in writing to perform the service.

Maximum penalty—200 penalty units.

**Division 3 Recovery of expenses and costs**

**26 Restriction on remedy for reward or expense**

A person must not sue for, or recover or keep, a reward or expense for the performance of a regulated activity as an agent for others for reward unless—

- (a) the person was authorised under part 2 to perform the activity; and
- (b) the person had been properly appointed or engaged under division 2 by the client.

Maximum penalty—200 penalty units.

**27 Recovery of costs of debt collector**

- (1) A person must not recover or attempt to recover from a debtor the costs or expenses of a debt collector for performing a debt collection activity or a repossession activity.

Maximum penalty—200 penalty units.

- (2) Subsection (1) does not apply to prevent a person who appoints a debt collector to repossess goods or chattels from a debtor from recovering the debt collector's costs and expenses if the person has a right under an agreement with the debtor or otherwise to recover the costs or expenses.
- (3) Costs or expenses recovered in contravention of this section may be recovered by the debtor as a debt.

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- (4) This section applies subject to the National Credit Code in schedule 1 of the *National Consumer Credit Protection Act 2009* (Cwlth).
- (5) In this section—
- costs** do not include—
- (a) stamp duty; or
  - (b) legal costs fixed by, or payable under, rules of court or a court order.
- debtor** includes a person from whom goods or chattels may be lawfully repossessed.

## Division 4                      Notifiable changes

### 28            **Notice to chief executive of change in place of business etc.**

- (1) A principal field agent must notify the chief executive in the approved form of—
- (a) any change in the agent’s principal place of business within 14 days after the change; and
  - (b) the closure of any place where the agent carries on a regulated business within 14 days after the closure; and
  - (c) the opening of any place where the agent carries on a regulated business within 14 days after the opening.

Maximum penalty—200 penalty units.

- (2) An employed field agent must notify the chief executive in the approved form of any change in the agent’s business address within 14 days after the change.

Maximum penalty—200 penalty units.

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**29 Notice to chief executive of changes in circumstances**

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

Maximum penalty—100 penalty units.

- (2) In this section—

*prescribed change* means a change prescribed under a regulation.

**Division 5 Prohibited conduct**

**30 Acting as debt collector**

- (1) A person must not, as an agent for someone else for reward, perform a regulated activity unless the person is authorised under this or another Act to perform the activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A person must not act as a debt collector unless the person is authorised under this or another Act to perform activities of a debt collector.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (3) Without limiting the ways a person may act as a debt collector, a person acts as a debt collector if the person—

(a) performs a regulated activity as an agent for someone else for reward; or

(b) advertises, notifies or states that the person—

(i) performs a regulated activity as an agent for someone else for reward; or

(ii) is willing to perform a regulated activity as an agent for someone else for reward; or

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- (c) in any way holds out as being ready to perform a regulated activity as an agent for someone else for reward.
- (4) However, a lawyer does not act as a debt collector merely because the lawyer collects debts in the lawyer's practice if the lawyer complies with the requirements of the *Legal Profession Act 2007* relating to the debts.
- (5) In this section—  
*lawyer* means a lawyer who, under the *Legal Profession Act 2007*, may engage in legal practice in the State.

### **31 Acting as subagent**

- (1) A person must not act as a subagent unless the person is registered as a subagent.  
Maximum penalty—200 penalty units.
- (2) In this section—  
*act as a subagent*, for a person, includes hold out that the person is a subagent.

### **32 Acting for more than 1 party prohibited**

- (1) A debt collector who is appointed to perform an activity for a person (*client*) in relation to another person must not accept appointment from the other person to perform an activity while the collector continues to act for the client in relation to the other person.  
Maximum penalty—200 penalty units.
- (2) Subsection (1) does not apply if the debt collector acts for more than 1 party in relation to a debt agreement under the *Bankruptcy Act 1966* (Cwlth), part IX.

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### **33 Production of licence or registration certificate**

- (1) A field agent must, if asked by a person with whom the agent is dealing, produce the agent's licence for inspection by the person.

Maximum penalty—100 penalty units.

- (2) A 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.

### **34 Employment of persons in regulated business**

- (1) A principal field agent must not employ a person to perform regulated activities for the agent as a subagent if the agent knows, or ought to know, the person does not hold a registration certificate.

Maximum penalty—200 penalty units.

- (2) A principal field agent who is an individual must not employ himself or herself, or another individual with whom the agent carries on business as a field agent, to perform regulated activities for the agent as a subagent.

Maximum penalty—200 penalty units.

- (3) A principal field agent that is a corporation must not employ an executive officer of the corporation to perform regulated activities for the agent as a subagent.

Maximum penalty—

- (a) for an individual guilty of the offence under the Criminal Code, chapter 2—200 penalty units; or  
(b) for a corporation—1000 penalty units.

### **35 Licence or registration certificate not to be used improperly**

- (1) A field agent or subagent must not—

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- (a) represent that the person's licence or registration certificate entitles the person to exercise a power the person may not lawfully exercise; or
- (b) use the person's licence or registration certificate to exercise a power the person may not lawfully exercise.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) A collection agent must not represent that the person's authorisation under part 2, division 3 entitles the person to exercise a power the person may not lawfully exercise.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) In this section—

*represent* includes suggest or imply.

*use* includes attempt to use.

### **36 Unlawful entry**

A field agent or subagent must not, when performing a regulated activity, enter any premises without lawful authority.

Maximum penalty—200 penalty units or 1 year's imprisonment.

### **37 Misrepresentation**

- (1) A debt collector or subagent must not by any false or misleading representation induce a person to enter into an arrangement for the payment of a debt.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) In this section—

*false or misleading*, in relation to a representation, includes the wilful concealment of a material fact in the representation.

*induce* includes attempt to induce.

### 38 Impersonating debt collectors

- (1) A creditor, when dealing with a person for payment of a debt, must not use any name, description, document or device intended to make the person believe that the person is not dealing directly with the creditor, but with a debt collector acting on the creditor's behalf.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A debt collector must not give any document to a creditor to enable the creditor to make a third person believe that the third person is dealing directly with the debt collector.

*Example for subsection (2)—*

debt collector's letterhead or stationery

Maximum penalty—200 penalty units or 2 years imprisonment.

## Division 6 Prescribed conduct provisions

### 39 Prescribed conduct provisions

- (1) A regulation may provide for conduct standards for debt collectors and subagents in performing a regulated activity.
- (2) A provision mentioned in subsection (1) is a *prescribed conduct provision*.

*Note—*

A contravention of a prescribed conduct provision is a ground for making an order against a debt collector or subagent under section 116.

## **Part 4                      Licensing**

### **Division 1                      How to obtain a licence**

#### **40                      Steps involved in obtaining a licence**

- (1) A person who wishes to obtain a licence must apply for the licence by—
  - (a) giving the chief executive an application showing, among other things, the person is eligible to obtain the licence; and
  - (b) paying—
    - (i) the fees prescribed under a regulation; and
    - (ii) if, before or when the application is made, a criminal history costs requirement is made of the person—the amount of the costs required to be paid; and
  - (c) giving the chief executive the other information required under section 41.
- (2) In deciding the person's application the chief executive must have regard, among other things, to—
  - (a) the person's suitability to hold a licence; and
  - (b) the person's eligibility to hold a licence.

### **Division 2                      Applications for licence**

#### **41                      Application for licence**

- (1) An applicant for a licence must—
  - (a) apply to the chief executive in the approved form; and
  - (b) state the term of the licence being applied for; and
  - (c) establish the applicant's eligibility for a licence; and



- 
- (d) state the names and addresses of the applicant's business associates; and
  - (e) provide any information the chief executive reasonably requires to decide whether the applicant is a suitable person to hold a licence.
- (2) The application must be accompanied by—
- (a) the application fee prescribed under a regulation; and
  - (b) the licence issue fee prescribed under a regulation; and
  - (c) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid; and
  - (d) for an applicant who is an individual, 2 recent colour photographs of the applicant of a size prescribed under a regulation and certified as photographs of the applicant in the way prescribed under a regulation.
- (3) The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably believes is needed to consider the application.
- (4) An applicant is taken to have withdrawn the application if the applicant fails to comply with a requirement made under subsection (3).

## **42 Applicant must state business address**

- (1) The applicant must also state in the applicant's application—
- (a) if the applicant intends carrying on a regulated business immediately after the issue of the licence—the place or places in Queensland where the applicant proposes to carry on a regulated business; or
  - (b) if the applicant does not intend carrying on a regulated business immediately after the issue of the licence—
    - (i) the capacity in which the applicant intends performing activities under the licence and the

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address where the activities are to be performed;  
and

*Examples of capacity in which activities may be performed—*

- as a person in charge of a corporation's regulated business
- as an employed field agent

- (ii) if the applicant intends to be a person in charge of a regulated business—the name of the applicant's employer and the address of the places of business where the applicant is to be in charge.

*Example of an address for subparagraphs (i) and (ii)—*

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

- (2) If the applicant intends to carry on a regulated business at more than 1 place, the applicant must state in the application the place the applicant intends to be the applicant's principal place of business.
- (3) A place of business or an address under this section—
- (a) must be a place where a document can be served personally; and
  - (b) must not be a post office box.

### **43 Particular persons can not make application**

- (1) A person who is disqualified from holding a licence can not make an application for a licence during the period for which the person is disqualified.
- (2) A corporation that was the holder of a licence that was cancelled can not make an application for a licence unless the corporation satisfies the chief executive that, because of a genuine sale—
- (a) no person who was a shareholder of, or held a beneficial interest in, the corporation when the licence was cancelled is a shareholder of, or holds a beneficial interest in, the applicant corporation; and

- 
- (b) no person who was in a position to control or influence the affairs of the corporation when the licence was cancelled is in a position to control or influence the affairs of the applicant corporation.
- (3) A person who made an application for a licence that was refused can not make another application for a licence—
- (a) for 3 months after the day the chief executive gave the person an information notice about the refusal; or
  - (b) if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed.
- (4) Subsection (3) does not apply if—
- (a) the applicant is a corporation; and
  - (b) the applicant satisfies the chief executive that, because of a genuine sale—
    - (i) no person who was a shareholder of, or held a beneficial interest in, the corporation when the refused application was made is a shareholder of, or holds a beneficial interest in, the applicant corporation; and
    - (ii) no person who was in a position to control or influence the affairs of the corporation when the refused application was made is in a position to control or influence the affairs of the applicant corporation.

## **Division 3                      Suitability of applicants and field agents**

### **44            Suitability of applicants and field agents—individuals**

- (1) An individual is not a suitable person to hold a licence if the person is—
- (a) an insolvent under administration; or

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- (b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
  - (c) currently disqualified from holding a licence or being registered as a subagent; or
  - (d) a person the chief executive decides under section 46 is not a suitable person to hold a licence.
- (2) An individual who is not a suitable person can not hold a licence.

#### **45 Suitability of applicants and field agents—corporations**

- (1) A corporation is not a suitable person to hold a licence if the corporation—
- (a) has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
  - (b) is currently disqualified from holding a licence; or
  - (c) is a person the chief executive decides under section 46 is not a suitable person to hold a licence.
- (2) A corporation is also not a suitable person to hold a licence if an executive officer of the corporation is not a suitable person to hold a licence under section 44.
- (3) A corporation that is not a suitable person can not hold a licence.

#### **46 Chief executive must consider suitability of applicants and field agents**

- (1) The chief executive must consider the following things in deciding whether a person is a suitable person to hold a licence—
- (a) the character of the person;
  - (b) the character of the person's business associates;

- 
- (c) whether the person held a licence or registration under a relevant Act that was suspended or cancelled under the relevant Act;
  - (d) whether an amount has been paid from the claim fund because the person did, or omitted to do, something that gave rise to the claim against the fund;
  - (e) whether the person has been disqualified under a relevant Act from being—
    - (i) the holder of a licence under the relevant Act; or
    - (ii) the holder of registration under the relevant Act; or
    - (iii) an executive officer of a corporation that holds a licence under the relevant Act;
  - (f) for an individual—
    - (i) the person's criminal history; and
    - (ii) whether the person has been an insolvent under administration; and
    - (iii) whether the person has been convicted of an offence against a relevant Act or the Administration Act; and
    - (iv) whether the person is capable of satisfactorily performing a regulated activity under the licence; and
    - (v) whether the person's name appears in the register of persons disqualified from managing corporations under the Corporations Act;
- Note—*
- See the Corporations Act, section 1274AA.
- (g) for a corporation—
    - (i) whether the corporation has been placed in receivership or liquidation; and
    - (ii) whether an executive officer of the corporation has been an insolvent under administration; and

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- (iii) whether the corporation or an executive officer of the corporation has been convicted of an offence against a relevant Act or the Administration Act; and
  - (iv) whether each executive officer of the corporation is a suitable person to hold a licence;
  - (h) another thing the chief executive may consider under this Act.
- (2) If the chief executive decides a person is not a suitable person to hold a licence, the chief executive must give the person an information notice about the decision within 14 days after the decision is made.
- (3) In this section—
- claim fund* includes—
- (a) the claim fund under PAMDA; and
  - (b) the auctioneers and agents fidelity guarantee fund continued in existence under the repealed *Auctioneers and Agents Act 1971*.

*relevant Act* means this Act, an Agents Act, PAMDA or a corresponding law.

#### **47 Public trustee is a suitable person**

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

#### **48 Chief executive of a department is a suitable person**

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

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## **Division 4                    Eligibility for licence**

### **49            Eligibility for licence**

- (1) An individual is eligible to obtain a licence only if the individual is at least 18 years.
- (2) A corporation is eligible to obtain a licence only if a person in charge of the corporation's regulated business is a field agent.
- (3) The corporation sole called The Public Trustee of Queensland is taken to be eligible to obtain a licence.
- (4) The chief executive of a department is taken to be eligible to obtain a licence.

## **Division 5                    Issue of licence**

### **50            Chief executive may issue or refuse to issue licence**

- (1) The chief executive may decide to issue or refuse to issue a licence to an applicant.
- (2) The chief executive may decide to issue a licence to an applicant only if the chief executive is satisfied—
  - (a) the applicant is a suitable person to hold a licence and, if the applicant intends carrying on a regulated business with others, each person with whom the applicant intends carrying on the business is a suitable person to hold a licence; and
  - (b) the applicant is eligible to hold a licence; and
  - (c) the application complies with section 41.
- (3) If the chief executive decides to refuse to issue the licence, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.

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## **51 Issue of licence to public trustee**

- (1) The chief executive may issue a licence to the public trustee in the public trustee's capacity as a corporation sole in the name 'The Public Trustee of Queensland'.
- (2) A licence issued to the public trustee authorises an officer or employee of the public trustee to perform any activity authorised by the public trustee that the public trustee may perform under the licence.
- (3) To remove any doubt, it is declared that an officer or employee performing an activity authorised by the public trustee is not required to be licensed or registered under this Act to perform the activity.

## **52 Issue of licence to chief executive of department**

- (1) The chief executive may issue a licence to the chief executive of a department in the name 'The Chief Executive of the (name of department)'.
- (2) If the name of the department changes during the term of the licence, the chief executive may reissue the licence in the department's new name.
- (3) The licence is taken to be issued to the chief executive of the department for the time being.
- (4) The chief executive of a department, as the holder of a licence, is taken to represent the State.
- (5) A licence issued to the chief executive of a department authorises an officer or employee of the department to perform any activity authorised by the chief executive that the chief executive may perform under the licence.
- (6) To remove any doubt, it is declared that an officer or employee performing an activity authorised by the chief executive is not required to be licensed or registered under this Act to perform the activity.



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### **53 Conditions of licence**

- (1) The chief executive may issue a licence on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence.
- (2) Without limiting subsection (1), a condition may—
  - (a) limit or prohibit the performance of an activity authorised under this Act or the Administration Act; or
  - (b) require the holder of the licence to hold insurance of a kind and in an amount prescribed under a regulation.
- (3) If the chief executive decides to issue a licence on condition, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.

## **Division 6 Renewal and restoration of licences**

### **Subdivision 1 Renewal**

#### **54 Application for renewal**

- (1) A field agent may apply for renewal of the agent's licence only before the licence expires.
- (2) The application must—
  - (a) be made to the chief executive in the approved form; and
  - (b) state the term of the licence being applied for; and
  - (c) state the names and addresses of the field agent's business associates; and
  - (d) be accompanied by—
    - (i) the application fee prescribed under a regulation; and
    - (ii) the licence renewal fee prescribed under a regulation; and

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- (iii) if the field agent is required as a condition of the agent's licence to hold insurance, proof of the currency of the insurance; and
  - (iv) if, before or when the application is made, a criminal history costs requirement is made of the field agent—the amount of the costs required to be paid.
- (3) The application must also be accompanied by—
  - (a) an audit report for all trust accounts kept by the field agent during the relevant audit period; or
  - (b) a statutory declaration that the field agent did not operate a trust account during the relevant audit period.
- (4) If requested by the chief executive, the application must, for a field agent who is an individual, also be accompanied by 2 recent colour photographs of the agent that are—
  - (a) of a size prescribed under a regulation; and
  - (b) certified as photographs of the agent in the way prescribed under a regulation.
- (5) The chief executive may, by written notice given to the field agent, require the agent to give the chief executive within a stated reasonable period information or material the chief executive reasonably believes is needed to consider the application.
- (6) The field agent is taken to have withdrawn the agent's application if the agent fails to comply with a request made under subsection (4) or requirement made under subsection (5).
- (7) In this section—

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

## 55 Chief executive may renew or refuse to renew licence

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

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- (2) The chief executive may renew the licence only if the chief executive is satisfied—
    - (a) the field agent is a suitable person to hold a licence and, if the agent carries on a regulated business with others, each person with whom the agent carries on the business is a suitable person to hold a licence; and
    - (b) the field agent is eligible to hold the licence; and
    - (c) the application complies with section 54.
  - (3) If the chief executive decides to refuse the application, the chief executive must give the field agent an information notice about the decision within 14 days after the decision is made.

## **56 Licence taken to be in force while application for renewal is considered**

If an application is made under section 54, the field agent's licence is taken to continue in force from the day that it would, apart from this section, have expired until the application is decided under section 55 or withdrawn.

## **Subdivision 2 Restoration**

### **57 Application for restoration**

- (1) If a person's licence expires, the person may apply for restoration of the licence.
- (2) The application must—
  - (a) be made within 3 months after the expiry; and
  - (b) be made to the chief executive in the approved form; and
  - (c) state the term of the licence being applied for; and
  - (d) state the names and addresses of the person's business associates; and
  - (e) be accompanied by—

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- (i) the application fee prescribed under a regulation; and
  - (ii) the licence renewal fee prescribed under a regulation; and
  - (iii) the licence restoration fee prescribed under a regulation; and
  - (iv) if the person was required as a condition of the person's licence to hold insurance, proof of the currency of the insurance; and
  - (v) if, before or when the application is made, a criminal history costs requirement is made of the person—the amount of the costs required to be paid.
- (3) The application must also be accompanied by—
- (a) an audit report about all trust accounts kept by the person during the relevant audit period; or
  - (b) a statutory declaration that the person did not operate a trust account during the relevant audit period.
- (4) If requested by the chief executive, the application must, for an individual, also be accompanied by 2 recent colour photographs of the individual that are—
- (a) of a size prescribed under a regulation; and
  - (b) certified as photographs of the individual in the way prescribed under a regulation.
- (5) The chief executive may, by written notice given to the person, require the person to give the chief executive within a stated reasonable period information or material the chief executive reasonably believes is needed to consider the application.
- (6) The person is taken to have withdrawn the person's application if the person fails to comply with a request made under subsection (4) or requirement made under subsection (5).

(7) In this section—

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

## **58 Chief executive may restore or refuse to restore licence**

- (1) The chief executive must consider the application for restoration and may restore or refuse to restore the licence.
- (2) The chief executive may restore the licence only if the chief executive is satisfied—
  - (a) the applicant is a suitable person to hold a licence and, if the applicant carries on, or intends to carry on, a regulated business with others, each person with whom the applicant carries on, or intends to carry on, the business, is a suitable person to hold a licence; and
  - (b) the applicant is eligible to hold the licence; and
  - (c) the application complies with section 57.
- (3) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.

## **59 Licence taken to continue in force for particular periods**

- (1) If an application is made under section 57, the applicant's licence is taken to continue in force from the day that it would, apart from this section, have expired until the application is decided under section 58 or withdrawn.
- (2) If the chief executive restores the licence—
  - (a) the licence is taken to have been renewed on the day it would, apart from this section, have expired (the *initial expiry date*); and
  - (b) to remove any doubt, a thing done during the period starting on the initial expiry date and ending on the day the licence is restored is taken to have been as validly

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done as it would have been if the licence had been renewed immediately before the initial expiry date.

## **Division 7                      Dealings with licences**

### **60            Transfer of licence prohibited**

A licence can not be transferred.

### **61            Amendment of licence conditions**

- (1) The chief executive may amend the conditions of a licence—
  - (a) on the application of the holder of the licence; or
  - (b) on the order of QCAT; or

*Note—*

QCAT may deal with the conditions of a licence under section 116.

  - (c) on the chief executive's own initiative.
- (2) An application under subsection (1)(a) must be made in the approved form and be accompanied by the application fee prescribed under a regulation.
- (3) Before granting the application, the chief executive must be satisfied the amendment of the condition is necessary or desirable for the proper performance of the activities authorised by the licence.
- (4) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.
- (5) Before making an amendment under subsection (1)(c), the chief executive must—
  - (a) give written notice to the holder of the licence—
    - (i) of the particulars of the proposed amendment; and

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- (ii) that the holder may make written submissions to the chief executive about the proposed amendment before a stated day, not later than 14 days after the notice is given to the holder; and
    - (b) have regard to submissions made to the chief executive by the holder before the stated day.
  - (6) Subsection (5) does not apply if the chief executive decides that the amendment must be made urgently—
    - (a) to avoid potential claims against the claim fund; or
    - (b) to ensure compliance with this Act or the Administration Act.
  - (7) If the chief executive decides to amend the conditions of a licence under subsection (1)(c), the chief executive must give the holder of the licence an information notice about the decision within 14 days after the decision is made.
  - (8) An amendment takes effect—
    - (a) on the day written notice of the amendment is given to the holder of the licence; or
    - (b) if a later day is stated in the notice, on the stated day.

## **62 Return of licence for amendment or replacement**

- (1) The chief executive may require the holder of a licence to produce the licence for amendment or replacement within a stated period of not less than 14 days if the chief executive intends to—
  - (a) amend the conditions of the licence under section 61; or
  - (b) replace the licence under section 75(5).
- (2) The holder must comply with a requirement under subsection (1), unless the holder has a reasonable excuse.

Maximum penalty—100 penalty units.

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### **63 Return of licence when suspended or cancelled**

A person whose licence has been suspended or cancelled must, unless the person has a reasonable excuse, return the licence to the chief executive—

- (a) if the licence was suspended under section 67—within 14 days after the agent receives an information notice about the suspension; or
- (b) if the licence was cancelled under section 68—within 14 days after the happening of an event mentioned in section 68; or
- (c) otherwise—within 14 days after the suspension or cancellation takes effect.

Maximum penalty—100 penalty units.

### **64 Surrender of licence**

- (1) A field agent may surrender the agent's licence by giving written notice, and returning the licence, to the chief executive.
- (2) A licence surrendered under this section stops having effect on the day it is surrendered.

### **65 Licence may be deactivated**

- (1) A field agent may ask the chief executive to deactivate the agent's licence.
- (2) A request under subsection (1) must be made in the approved form and be accompanied by the field agent's licence and the fee prescribed under a regulation.
- (3) The licence is taken to be deactivated when the request, the licence and the prescribed fee are received by the chief executive under subsection (2).
- (4) A licence that is deactivated does not authorise the holder of the licence to perform an activity under the authority of the licence.



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- (5) The deactivation of a licence under this section does not—
    - (a) affect the term of the licence; or
    - (b) entitle the holder of the licence to a refund of fees relating to the licence for the balance of the licence's term.
  - (6) The holder of a deactivated licence may apply to have the licence renewed under section 55 or restored under section 58 as a deactivated licence at a reduced fee prescribed under a regulation.

## **66 Deactivated licence may be reactivated**

- (1) The holder of a deactivated licence may ask the chief executive to reactivate the licence.
- (2) If the licence has been deactivated for 5 years or more, the chief executive may reactivate the licence only if the chief executive is satisfied—
  - (a) the holder is a suitable person to hold a licence and, if the holder carries on, or intends to carry on, a regulated business with others, each person with whom the holder carries on, or intends to carry on, the business, is a suitable person to hold a licence; and
  - (b) the holder is eligible to hold the licence.
- (3) A request under subsection (1) must be made in the approved form and be accompanied by the fee prescribed under a regulation.
- (4) The chief executive may, by written notice given to the holder, require the holder to give the chief executive within a stated reasonable period information or material the chief executive reasonably believes is needed to consider the request.
- (5) The holder is taken to have withdrawn the holder's request if the holder fails to comply with a requirement made under subsection (4).



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- (b) without limiting paragraph (a), for subsection (1)(b), suspend a licence held by an employee of the field agent if the chief executive reasonably believes the employee is responsible in any way for the irregularity or deficiency in the agent's trust account.
  - (3) If the chief executive suspends a licence for a reason mentioned in subsection (1)(a), (b), (d) or (e), 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)(c), the licence is suspended until whichever of the following happens first—
    - (a) the field agent files the required audit report;
    - (b) an application to QCAT for the cancellation of the licence is heard and decided;
    - (c) the licence is cancelled or otherwise ends under this Act.
  - (5) The chief executive must give the field agent an information notice about the suspension within 14 days after suspending the field agent's licence.

## **68 Immediate cancellation**

A field agent's licence is cancelled on the happening of any of the following events—

- (a) the agent is convicted of a serious offence;
- (b) if the agent is an individual, the agent becomes an insolvent under administration;
- (c) if the agent is a corporation, the agent is wound up or de-registered under the Corporations Act.

## Division 9                      Substitute licences

### 69      Appointment of substitute

- (1) This section applies to a principal field agent who is an individual.
- (2) The field agent may appoint an adult as the agent's substitute for a period of not more than 30 days only if—
  - (a) the adult consents to the appointment; and
  - (b) if the agent is required as a condition of the agent's licence to hold insurance, the adult is covered by the insurance or holds insurance that complies with the requirements of the condition.
- (3) The field agent must ensure—
  - (a) an appointment under subsection (2) and the substitute's consent to the appointment are in writing and state the period of appointment; and
  - (b) the appointment, consent and evidence of any insurance the substitute is required to have are kept at the agent's registered office.

Maximum penalty—100 penalty units.

- (4) If the field agent intends to appoint an adult as the agent's substitute for a period of more than 30 days, the agent must apply to the chief executive in the approved form for the appointment or the extension of the appointment of an adult (*nominated person*) as the agent's substitute.

Maximum penalty—200 penalty units.

- (5) If the field agent is a person for whom an administrator has been appointed under the *Guardianship and Administration Act 2000* or is deceased, the agent's representative may make the application under subsection (4).
- (6) The application must be accompanied by—
  - (a) the nominated person's signed consent to the appointment; and

- 
- (b) enough information about the nominated person to enable the chief executive to decide whether the person—
    - (i) is a suitable person to hold a licence; and
    - (ii) if the field agent is required as a condition of the agent’s licence to hold insurance, is covered by the insurance or holds insurance that complies with the requirements of the condition; and
  - (c) the application fee prescribed under a regulation; and
  - (d) if, before or when the application is made, a criminal history costs requirement is made of the field agent—the amount of the costs required to be paid.
- (7) In this section—
- representative*, of a field agent, means—
- (a) for an agent for whom an administrator has been appointed under the *Guardianship and Administration Act 2000*—the agent’s administrator; or
  - (b) for a deceased agent—the agent’s personal representative.

**70 Chief executive may appoint or refuse to appoint substitute**

- (1) The chief executive may appoint or refuse to appoint a nominated person mentioned in section 69(4) as a field agent’s substitute.
- (2) The chief executive may appoint the nominated person only if the chief executive is satisfied that the person—
  - (a) is, under division 3, a suitable person to hold a licence; and
  - (b) if a condition of the field agent’s licence requires the agent to hold insurance—is covered by the insurance or holds insurance that complies with the requirements of the condition.

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- (3) An appointment under this section may be made subject to the conditions the chief executive considers appropriate.
- (4) The chief executive must give written notice of the appointment to the field agent and the substitute.
- (5) If the chief executive decides to refuse the application or to impose conditions on the appointment, the chief executive must give the field agent an information notice about the decision within 14 days after the decision is made.

## **71 Substitute**

- (1) A substitute appointed under section 69(2) or 70—
  - (a) must act as substitute for the field agent for whom the substitute is appointed; and
  - (b) is taken to be the field agent during the period of appointment.
- (2) A field agent for whom a substitute has been appointed under section 69(2) or 70 must not act under the authority of the agent's licence while the appointment of the substitute continues.

Maximum penalty—200 penalty units.

- (3) The appointment of the substitute ends if—
  - (a) the period of appointment ends; or
  - (b) the field agent gives written notice to end the appointment from a date stated in the notice—
    - (i) for a substitute appointed under section 69(2)—to the substitute; or
    - (ii) for a substitute appointed under section 70—to the chief executive and the substitute; or
  - (c) the substitute gives written notice to end the appointment from a date stated in the notice—
    - (i) for a substitute appointed under section 69(2)—to the field agent making the appointment; or

- (ii) for a substitute appointed under section 70—to the chief executive and the field agent who applied for the appointment; or
- (d) for a substitute appointed under section 70—the chief executive revokes the substitute’s appointment; or
- (e) the field agent’s licence is suspended or cancelled; or
- (f) the field agent stops carrying on a regulated business.

## **72 Limitation on period of substitution**

- (1) A principal field agent may not appoint a substitute for more than 12 weeks in any period of 12 months.
- (2) The chief executive may not appoint a substitute for any principal field agent for more than 26 weeks in any period of 12 months.

# **Division 10 General provisions about licences**

## **73 Form of licence**

- (1) A licence must be in the approved form.
- (2) However, the chief executive may approve—
  - (a) a form of licence for office display purposes; and  
*Example—*  
a licence in the form of a certificate that may be framed and displayed in an office
  - (b) a form of licence for personal identification purposes.  
*Example—*  
a licence in the form of a small photo identification card suitable for carrying easily on one’s person
- (3) The licence must contain the following—
  - (a) the name of the holder of the licence;
  - (b) the date of issue of the licence;

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- (c) the expiry date of the licence;
- (d) for a licence for personal identification purposes, a recent photograph of the holder of the licence;
- (e) any other particulars prescribed under a regulation.

## **74 Term of licence**

- (1) A licence may be issued for a 1-year or 3-year term.
- (2) However, a regulation may prescribe the circumstances under which a licence may be issued or renewed for a shorter term.

*Example—*

A licence may be issued for a shorter term to ensure multiple licences held by the same person expire on the same day.

## **75 Replacement licences**

- (1) A field agent may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged licence.
- (2) The application must be made in the approved form.
- (3) The chief executive must grant the application if the chief executive is satisfied the licence has been lost, stolen, destroyed or damaged in a way to require its replacement.
- (4) If the chief executive grants the application, the chief executive must issue another licence to the field agent to replace the lost, stolen, destroyed or damaged licence.
- (5) The chief executive may also replace a licence if—
  - (a) either—
    - (i) the holder of the licence has given written notice to the chief executive of a prescribed change under section 29; or
    - (ii) the chief executive reasonably believes a prescribed change for the holder of the licence has happened; and



- 
- (b) the chief executive is satisfied that the prescribed change requires a replacement of the licence.
  - (6) If the chief executive replaces a licence under this section—
    - (a) the licence continues to be subject to the same conditions and term that the licence was subject to before being replaced; and
    - (b) the holder of the licence must pay the chief executive the fee prescribed under a regulation.
  - (7) In this section—  
*prescribed change* see section 29(2).

## 76 Register of licences

- (1) The chief executive must keep a register of licences and applications for licences (*licence register*).
- (2) The licence register must contain the following particulars—
  - (a) for each applicant for a licence—
    - (i) the applicant's name; and
    - (ii) if the applicant intends to carry on a regulated business, the place or places where the applicant intends to carry on the business; and
    - (iii) the date of the application; and
    - (iv) the application number;
  - (b) for each field agent—
    - (i) the agent's name; and
    - (ii) the agent's registered office; and
    - (iii) the dates of issue and expiry of the agent's current licence; and
    - (iv) any conditions imposed on the agent's licence; and
    - (v) if the agent is a corporation, the name of the individual in charge of the corporation's regulated business; and

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- (vi) if the agent is a director of a licensed corporation, the name of the licensed corporation; and
  - (vii) if the agent is an employee of another field agent, the name of the agent's employer; and
  - (viii) the agent's licence number; and
  - (ix) particulars of any surrender, suspension or cancellation of the agent's licence.
- (3) A person may, on payment of the fee prescribed under a regulation, inspect, or get a copy of details in, the part of the register containing the particulars mentioned in subsection (2)—
- (a) at a place or places decided by the chief executive; or
  - (b) by using a computer.
- (4) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.
- (5) The register may be kept in the way the chief executive considers appropriate.
- (6) In this section—  
*contain* includes record and store.

## **Part 5                      Subagents**

### **Division 1                How to obtain registration**

#### **77            Steps involved in obtaining registration**

- (1) A person who wishes to obtain registration as a subagent must apply for registration by—

- 
- (a) giving the chief executive an application showing, among other things, the person is eligible for registration as a subagent; and
  - (b) paying the fees prescribed under a regulation.
- (2) In deciding the person's application the chief executive must have regard, among other things, to—
- (a) whether the person is a suitable person for registration as a subagent; and
  - (b) whether the person is eligible for registration as a subagent.

## **Division 2                      Applications for registration**

### **78            Application for registration**

- (1) An applicant for registration as a subagent must—
  - (a) apply to the chief executive in the approved form; and
  - (b) state the term of the registration being applied for; and
  - (c) establish the applicant's suitability and eligibility for registration as a subagent; and
  - (d) provide any information the chief executive reasonably requires to decide whether the applicant is a suitable person, and eligible, for registration as a subagent.
- (2) The application must be accompanied by—
  - (a) the application fee prescribed under a regulation; and
  - (b) the registration fee prescribed under a regulation; and
  - (c) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid; and
  - (d) 2 recent colour photographs of the applicant of a size prescribed under a regulation and certified as photographs of the applicant in the way prescribed under a regulation.

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- (3) The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably believes is needed to consider the application.
- (4) An applicant is taken to have withdrawn the application if the applicant fails to comply with a requirement made under subsection (3).

## **79 Particular individuals can not make application**

- (1) An individual who is disqualified from being registered as a subagent can not make an application for registration as a subagent during the period for which the individual is disqualified.
- (2) An individual who made an application for registration as a subagent that was refused can not make another application for registration as a subagent—
  - (a) for 3 months after the day the chief executive gave the person an information notice for the refusal; or
  - (b) if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed.

## **Division 3 Suitability of applicants and subagents**

### **80 Suitability of applicants and subagents**

- (1) A person is not a suitable person for registration as a subagent if the person is—
  - (a) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or

- 
- (b) currently disqualified from holding a licence or being registered as a subagent; or
  - (c) a person the chief executive decides under section 81 is not a suitable person for registration as a subagent.
- (2) An individual who is not a suitable person can not obtain registration as a subagent.

**81 Chief executive must consider suitability of applicants and subagents**

- (1) The chief executive must, when deciding whether a person is a suitable person for registration as a subagent, consider all of the following things—
- (a) the person’s character;
  - (b) whether the person held a licence or registration under a relevant Act that was suspended or cancelled under the relevant Act;
  - (c) whether an amount has been paid from the claim fund because the person did, or omitted to do, something that gave rise to the claim against the fund;
  - (d) whether the person has been disqualified under a relevant Act from being—
    - (i) the holder of a licence under the relevant Act; or
    - (ii) the holder of registration under the relevant Act; or
    - (iii) an executive officer of a corporation that holds a licence under the relevant Act;
  - (e) the person’s criminal history;
  - (f) if the person is an insolvent under administration—
    - (i) the circumstances giving rise to the person being an insolvent under administration; and
    - (ii) whether the person took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the person being an insolvent under administration; and

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- (iii) whether the person is in a position to significantly influence the management of a field agent's regulated business;
  - (g) whether the person has been convicted of an offence against a relevant Act or the Administration Act;
  - (h) whether the person is capable of satisfactorily performing a regulated activity under the registration;
  - (i) whether the person's name appears in the register of persons who have been disqualified from managing corporations under the Corporations Act;
- Note—*
- See the Corporations Act, section 1274AA.
- (j) another thing the chief executive may consider under this Act.
- (2) If the chief executive decides a person is not a suitable person for registration as a subagent, the chief executive must give the person an information notice about the decision within 14 days after the decision is made.
- (3) In this section—
- claim fund* includes—
- (a) the claim fund under PAMDA; and
  - (b) the auctioneers and agents fidelity guarantee fund continued in existence under the repealed *Auctioneers and Agents Act 1971*.

*relevant Act* means this Act, an Agents Act, PAMDA or a corresponding law.

## Division 4 Eligibility for registration

### 82 Eligibility for registration as subagent

A person is eligible for registration as a subagent only if the person is an individual who is at least 18 years.

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## **Division 5                      Grant of registration**

### **83            Chief executive may grant or refuse registration**

- (1) The chief executive may decide to grant or refuse to grant registration of an applicant as a subagent.
- (2) The chief executive may decide to grant registration of an applicant as a subagent only if the chief executive is satisfied—
  - (a) the applicant is a suitable person for registration as a subagent; and
  - (b) the applicant is eligible for registration as a subagent; and
  - (c) the application complies with section 78.
- (3) If the chief executive refuses to grant registration of an applicant as a subagent, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.
- (4) If the chief executive grants registration of an applicant as a subagent, the chief executive must issue the applicant a registration certificate for the registration.

### **84            Conditions of registration**

- (1) The chief executive may grant registration as a subagent on the conditions the chief executive considers necessary or desirable—
  - (a) for the proper performance of the activities authorised by the registration; or
  - (b) for another purpose consistent with the achievement of the objects of this Act or the Administration Act.

*Example—*

If the chief executive decides to grant registration as a subagent to a person who is or has been an insolvent under administration, the chief executive may grant the registration subject to a condition that the

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person not receive, bank or otherwise be responsible for dealing with trust account moneys.

- (2) A condition may limit or prohibit the performance of an activity authorised under this Act or the Administration Act.
- (3) If the chief executive decides to grant registration of an applicant as a subagent subject to a condition, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.

## **Division 6                      Renewal and restoration of registration**

### **Subdivision 1              Renewal**

#### **85              Application for renewal**

- (1) A subagent may apply for renewal of the subagent's registration as a subagent only before the registration expires.
- (2) The application must—
  - (a) be made to the chief executive in the approved form; and
  - (b) state the term of the registration being applied for; and
  - (c) be accompanied by—
    - (i) the application fee prescribed under a regulation; and
    - (ii) the registration renewal fee prescribed under a regulation; and
    - (iii) if, before or when the application is made, a criminal history costs requirement is made of the subagent—the amount of the costs required to be paid.
- (3) If requested by the chief executive, the application must be accompanied by 2 recent colour photographs of the subagent that are—



- (a) of a size prescribed under a regulation; and
  - (b) certified as photographs of the applicant in the way prescribed under a regulation.
- (4) The chief executive may, by written notice given to the subagent, require the subagent to give the chief executive within a stated reasonable period information or material the chief executive reasonably believes is needed to consider the application.
- (5) A subagent is taken to have withdrawn the subagent's application if the subagent fails to comply with a request made under subsection (3) or requirement made under subsection (4).

#### **86 Chief executive may renew or refuse to renew registration**

- (1) The chief executive must consider the application for renewal and may renew or refuse to renew the registration.
- (2) The chief executive may renew the registration only if the chief executive is satisfied—
- (a) the subagent is a suitable person for registration as a subagent; and
  - (b) the application complies with section 85.
- (3) If the chief executive decides to refuse the application, the chief executive must give the subagent an information notice about the decision within 14 days after the decision is made.

#### **87 Registration taken to be in force while application for renewal is considered**

If an application is made under section 85, the subagent's registration is taken to continue in force from the day that it would, apart from this section, have expired until the application is decided under section 86 or withdrawn.

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## **Subdivision 2      Restoration**

### **88      Application for restoration**

- (1) If a person's registration as a subagent expires, the person may apply for restoration of the registration.
- (2) The application must—
  - (a) be made within 3 months after the expiry; and
  - (b) be made to the chief executive in the approved form; and
  - (c) state the term of the registration being applied for; and
  - (d) be accompanied by—
    - (i) the application fee prescribed under a regulation; and
    - (ii) the registration renewal fee prescribed under a regulation; and
    - (iii) the registration restoration fee prescribed under a regulation; and
    - (iv) if, before or when the application is made, a criminal history costs requirement is made of the person—the amount of the costs required to be paid.
- (3) If requested by the chief executive, the application must be accompanied by 2 recent colour photographs of the person that are—
  - (a) of a size prescribed under a regulation; and
  - (b) certified as photographs of the person in the way prescribed under a regulation.
- (4) The chief executive may, by written notice given to the person, require the person to give the chief executive within a stated reasonable period information or material the chief executive reasonably believes is needed to consider the application.

- (5) The person is taken to have withdrawn the person's application if the person fails to comply with a request made under subsection (3) or requirement made under subsection (4).

## **89 Chief executive may restore or refuse to restore registration**

- (1) The chief executive must consider the application for restoration and may restore or refuse to restore the registration.
- (2) The chief executive may restore the registration only if the chief executive is satisfied—
  - (a) the person is a suitable person for registration as a subagent; and
  - (b) the application complies with section 88.
- (3) If the chief executive decides to refuse the application, the chief executive must give the person an information notice about the decision within 14 days after the decision is made.

## **90 Registration to continue in force for particular periods**

- (1) If an application is made under section 88, the applicant's registration is taken to continue in force from the day that it would, apart from this section, have expired until the application for restoration is decided under section 89 or withdrawn.
- (2) If the chief executive decides to restore the registration under section 89—
  - (a) the registration is taken to have been renewed on the day it would, apart from this section, have expired (the *initial expiry date*); and
  - (b) to remove any doubt, a thing done during the period starting on the initial expiry date and ending on the day the registration is restored is taken to have been as

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validly done as it would have been if the registration had been renewed immediately before the initial expiry date.

## **Division 7                      Dealings with registration and registration certificates**

### **91            Transfer of registration or registration certificate prohibited**

- (1) A subagent's registration can not be transferred.
- (2) A subagent's registration certificate can not be transferred.

### **92            Amendment of registration conditions**

- (1) The chief executive may amend the conditions of the registration of a person as a subagent—
  - (a) on the application of the subagent; or
  - (b) on the order of QCAT; or

*Note—*

QCAT may deal with the conditions of a person's registration under section 116.

  - (c) on the chief executive's own initiative.
- (2) An application under subsection (1)(a) must be made to the chief executive in the approved form and be accompanied by the application fee prescribed under a regulation.
- (3) Before granting the application, the chief executive must be satisfied the amendment of the condition is necessary or desirable—
  - (a) for the proper performance of the activities authorised by the registration; or
  - (b) for another purpose consistent with the achievement of the objects of this Act or the Administration Act.

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- (4) If the chief executive decides to refuse the application, the chief executive must give the subagent an information notice about the decision within 14 days after the decision is made.
  - (5) Before making an amendment under subsection (1)(c), the chief executive must—
    - (a) give written notice to the subagent—
      - (i) of the particulars of the proposed amendment; and
      - (ii) that the subagent may make written submissions to the chief executive about the proposed amendment before a stated day, not later than 14 days after the notice is given to the subagent; and
    - (b) have regard to submissions made to the chief executive by the subagent before the stated day.
  - (6) Subsection (5) does not apply if the chief executive decides that the amendment must be made urgently to ensure compliance with this Act or the Administration Act.
  - (7) If the chief executive decides to amend the conditions of a subagent's registration under subsection (1)(c), the chief executive must give the subagent an information notice about the decision within 14 days after the decision is made.
  - (8) An amendment takes effect—
    - (a) on the day written notice of the amendment is given to the subagent; or
    - (b) if a later day is stated in the notice, on the stated day.

### **93 Return of registration certificate for amendment or replacement**

- (1) The chief executive may require a subagent to produce the subagent's registration certificate for amendment or replacement within a stated period of not less than 14 days if the chief executive intends to—
  - (a) amend the conditions of the subagent's registration under section 92; or

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(b) replace the certificate under section 100(5).

- (2) The subagent must comply with a requirement under subsection (1), unless the subagent has a reasonable excuse.

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

#### **94 Return of registration certificate when registration suspended or cancelled**

A subagent whose registration has been suspended or cancelled must, unless the subagent has a reasonable excuse, return the subagent's registration certificate to the chief executive—

- (a) if the registration was suspended under section 96—within 14 days after the subagent receives an information notice about the suspension; or
- (b) if the registration was cancelled under section 97—within 14 days after the subagent is convicted of the serious offence; or
- (c) otherwise—within 14 days after the suspension or cancellation takes effect.

Maximum penalty—100 penalty units.

#### **95 Surrender of registration**

- (1) A subagent may surrender the subagent's registration by giving written notice, and returning the subagent's registration certificate, to the chief executive.
- (2) Registration surrendered under this section, and the registration certificate issued for the registration, stops having effect on the day it is surrendered.



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## **97 Immediate cancellation**

The registration of a subagent is cancelled if the subagent is convicted of a serious offence.

## **Division 9 General provisions about registration and registration certificates**

### **98 Form of registration certificate**

- (1) A registration certificate issued for registration as a subagent must be in the approved form.
- (2) However, the chief executive may approve—
  - (a) a form of certificate for office display purposes; and

*Example—*

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

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

*Example—*

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

- (3) The registration certificate must contain the following—
  - (a) the name of the holder of the certificate;
  - (b) the date of grant of registration;
  - (c) the expiry date of registration;
  - (d) for a registration certificate for personal identification purposes, a recent photograph of the holder of the certificate;
  - (e) any other particulars prescribed under a regulation.



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**99 Term of registration**

Registration as a subagent may be granted for a 1-year or 3-year term.

**100 Replacement registration certificates**

- (1) A subagent may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged registration certificate.
- (2) The application must be made in the approved form.
- (3) The chief executive must grant the application if the chief executive is satisfied the registration certificate has been lost, stolen or destroyed, or damaged in a way to require its replacement.
- (4) If the chief executive grants the application, the chief executive must issue another registration certificate to the subagent to replace the lost, stolen, destroyed or damaged certificate.
- (5) The chief executive may also replace a registration certificate if—
  - (a) either—
    - (i) the holder of the certificate has given written notice to the chief executive of a prescribed change under section 29; or
    - (ii) the chief executive reasonably believes a prescribed change for the holder of the certificate has happened; and
  - (b) the chief executive is satisfied that the prescribed change requires a replacement of the certificate.
- (6) If the chief executive replaces a registration certificate under this section—
  - (a) the registration for which the certificate was issued continues to be subject to the same conditions and term that the registration was subject to before the certificate was replaced; and

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- (b) the holder of the certificate must pay the chief executive the fee prescribed under a regulation.
- (7) In this section—
- prescribed change* see section 29(2).

## 101 Registration register

- (1) The chief executive must keep a register of registration certificates and applications for registration as a subagent.
- (2) The register must contain the following particulars—
  - (a) for each applicant for registration as a subagent—
    - (i) the applicant's name; and
    - (ii) the date of the application; and
    - (iii) the application number;
  - (b) for each subagent—
    - (i) the subagent's name; and
    - (ii) the dates of grant and expiry of the subagent's current registration; and
    - (iii) any conditions imposed on the subagent's registration; and
    - (iv) the subagent's registration certificate number; and
    - (v) particulars of any surrender, suspension or cancellation of the subagent's registration.
- (3) A person may, on payment of the fee prescribed under a regulation, inspect, or get a copy of details in, the part of the register containing the particulars mentioned in subsection (2)—
  - (a) at a place or places decided by the chief executive; or
  - (b) by using a computer.
- (4) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.

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- (5) The register may be kept in the way the chief executive considers appropriate, including, for example, as part of the licence register kept under section 76.
- (6) In this section—  
*contain* includes record and store.

## Part 6 Collection agents

### 102 Suitability of collection agents—individuals

An individual is suitable to perform a debt collection activity as authorised under part 2, division 3 unless the individual—

- (a) is under 18 years; or
- (b) is an insolvent under administration; or
- (c) has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
- (d) holds a licence, or a registration certificate for registration as a subagent, that is suspended; or
- (e) is disqualified from—
  - (i) holding a licence; or
  - (ii) being registered as a subagent; or
  - (iii) performing a debt collection activity as authorised under part 2, division 3.

### 103 Suitability of collection agents—corporations

- (1) A corporation is suitable to perform a debt collection activity as authorised under part 2, division 3 unless—
- (a) the individual in charge of the corporation's regulated business is not suitable to perform a debt collection activity under section 102; or

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- (b) an individual who is an executive officer of the corporation is not suitable to perform a debt collection activity under section 102; or
  - (c) the corporation has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
  - (d) the corporation holds a licence that is suspended; or
  - (e) the corporation held a licence that was cancelled (the *first licence*); or
  - (f) the corporation is disqualified from holding a licence or performing a debt collection activity as authorised under part 2, division 3.
- (2) Subsection (1)(e) does not apply if the corporation is issued another licence after the cancellation of the first licence and the other licence has not also been cancelled.

## **Part 7                      Investigations about suitability**

### **Division 1                General investigations**

#### **104      Investigations about suitability of particular persons**

- (1) This section applies for each of the following persons—
- (a) an applicant for—
    - (i) the issue, renewal or restoration of a licence; or
    - (ii) the grant, renewal or restoration of registration as a subagent;
  - (b) a debt collector;
  - (c) a subagent;

- 
- (d) a person asking the chief executive to reactivate the person's deactivated licence;
  - (e) a nominated person mentioned in section 69(4).
- (2) The chief executive may make investigations to help the chief executive decide whether the person is—
- (a) a suitable person to hold a licence; or
  - (b) a suitable person for registration as a subagent; or
  - (c) suitable to perform a debt collection activity as authorised under part 2, division 3; or
  - (d) a suitable person to open a trust account under the Administration Act, part 2.
- (3) For the purpose of investigating a person under subsection (2), the chief executive may also investigate either or both of the following persons—
- (a) if the person is a corporation—the corporation's executive officers;
  - (b) a business associate of the person.

## **Division 2                      Criminal history**

### **105      Criminal history report**

- (1) Without limiting section 104, the chief executive may ask the commissioner of the police service for a report about the criminal history of a person mentioned in section 104(1) or (3).
- (2) The commissioner must give the report to the chief executive.
- (3) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.
- (4) If the criminal history of a person includes a conviction recorded against the person, the commissioner's report must be written.

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## **106 Costs of criminal history report**

- (1) The chief executive may require the following persons to pay the reasonable, but no more than actual, costs of obtaining a report under section 105—
  - (a) for a report about a person mentioned in section 104(1)(a) to (d), or an associate of the person—the person;
  - (b) for a report about a person mentioned in section 104(1)(e)—the principal field agent who intends to appoint the person as the agent’s substitute under section 69.
- (2) The requirement is a *criminal history costs requirement*.
- (3) However, a collection agent is not required to pay any amount required under a criminal history costs requirement if—
  - (a) the person does not have a criminal history that would make the person not suitable to perform a debt collection activity as authorised under part 2, division 3; and
  - (b) the report under section 105 does not relate to the person opening a trust account under the Administration Act.
- (4) The chief executive must refund to a person who is a relevant applicant an amount paid under the criminal history costs requirement if—
  - (a) the chief executive refuses the person’s application without asking for the report; or
  - (b) the person’s application is withdrawn before the chief executive asks for the report.
- (5) If the criminal history costs requirement is made of an applicant under this Act after the applicant’s application is made, the application is taken to have been withdrawn if the applicant fails to comply with the criminal history costs requirement.
- (6) If the criminal history costs requirement is made of a collection agent and the agent fails to comply with the

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requirement, the amount of the costs under the requirement may be recovered, as a debt, by the chief executive in any court of competent jurisdiction unless subsection (3) or (5) applies to the agent.

(7) In this section—

*associate*, of a person, means—

- (a) for a corporation—the corporation’s executive officers;  
or
- (b) a business associate of the person.

*relevant applicant* means—

- (a) an applicant for—
  - (i) the issue, renewal or restoration of a licence; or
  - (ii) the grant, renewal or restoration of registration as a subagent; or
- (b) a collection agent who applies for an authority to open a trust account under the Administration Act, section 10;  
or
- (c) a principal field agent who applies to appoint a person as the agent’s substitute under section 69.

## **107 Making criminal history costs requirement**

- (1) The chief executive may make a criminal history costs requirement of a person—
  - (a) in an approved form for an application or request under this Act or the Administration Act; or
  - (b) on the department’s website; or
  - (c) in a written notice given by the chief executive to the person.
- (2) However, subsection (3) applies if a criminal history costs requirement is made of—
  - (a) an applicant under this Act after the application is made;  
or

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- (b) a collection agent but not in relation to an application made by the agent.
- (3) The criminal history costs requirement must—
  - (a) be made in a written notice given by the chief executive to the applicant or collection agent; and
  - (b) also include a requirement for the costs to be paid within a stated reasonable period.

### **108 Notice of change in criminal history**

- (1) This section applies if—
  - (a) the commissioner of the police service suspects on reasonable grounds a person—
    - (i) is a field agent or subagent; or
    - (ii) is a field agent's substitute because of an appointment made under section 69; or
    - (iii) is required to open a trust account under section 111; and
  - (b) there is a change in the person's criminal history.
- (2) The commissioner may notify the chief executive that the person's criminal history has changed.
- (3) The notice must state the following—
  - (a) the person's name and any other name that the commissioner believes the person may use or may have used;
  - (b) the person's date and place of birth;
  - (c) a brief description of the nature of the offence giving rise to the conviction or charge to which the change relates.
- (4) The chief executive may confirm the commissioner's suspicions under subsection (1).



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- (5) For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.
- (6) In this section—
- criminal history*, for a person, includes a charge of an offence laid against the person that has not been dismissed.
- offence* includes alleged offence.

### **109 Use of information obtained under ss 105 or 108**

- (1) This section applies to the chief executive in considering information about a person obtained under section 105 or 108.
- (2) Information about a conviction of a person may be used only for making a decision as to whether a person is—
- (a) a suitable person to hold a licence; or
  - (b) a suitable person to be registered as a subagent; or
  - (c) suitable to perform a debt collection activity as authorised under part 2, division 3; or
  - (d) a suitable person to open a trust account under the Administration Act, part 2.
- (3) Information about a charge of an offence laid against a person may not be the basis for making a decision mentioned in subsection (2).

### **110 Confidentiality of criminal history**

- (1) A public service employee performing functions under this Act must not, directly or indirectly, disclose to anyone else—
- (a) a report about a person's criminal history, or information contained in the report, obtained under section 105; or
  - (b) a notice about a change in a person's criminal history, or information contained in the notice, given under section 108.

Maximum penalty—100 penalty units.

[s 111]

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- (2) However, a person does not contravene subsection (1) if—
  - (a) the disclosure of the report, notice or information is authorised by the chief executive but only to the extent necessary to perform a function under or relating to this Act; or
  - (b) the disclosure is otherwise required or permitted by law.
- (3) The chief executive must—
  - (a) destroy a report about a person’s criminal history obtained under section 105 as soon as practicable after considering the report; and
  - (b) destroy a notice about a change in a person’s criminal history given under section 108 as soon as practicable after considering the notice.

## **Part 8 Trust accounts**

### **111 Opening and keeping trust accounts**

- (1) A principal field agent must open and keep a trust account under the Administration Act if an amount is likely to be received by the agent for a transaction, or with written direction for its use, when performing a regulated activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A principal collection agent must open and keep a trust account under the Administration Act if an amount is likely to be received by the agent for a transaction, or with written direction for its use, when performing a debt collection activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (3) In this section—

*amount* does not include an amount payable to a field agent or collection agent for a transaction in refund of an expense the agent was authorised to incur and did incur and for which the agent holds a receipt.

*principal collection agent* means a collection agent who carries on a regulated business on the agent's own behalf.

## Part 9 QCAT Proceedings

### Division 1 Preliminary

#### 112 Definitions for pt 9

In this part—

*debt collector* includes—

- (a) a person who has held a licence at any time within 3 years before a proceeding involving the person is started under this part; or
- (b) a person who, under an authorisation under part 2, division 3 performed a regulated activity at any time within 3 years before a proceeding involving the person is started under this part.

*subagent* includes a person who was a subagent at any time within 1 year before a proceeding involving the person is started under this part.

### Division 2 Jurisdiction

#### 113 Jurisdiction

For this Act, QCAT has the following jurisdiction—

- (a) to make orders under section 116;

[s 114]

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- (b) to review decisions of the chief executive relating to licensing and registration;
- (c) to make orders under section 120.

## **Division 3                      QCAT proceedings affecting authorisations**

### **114      Grounds for order under section 116**

- (1) The following are grounds for making an order under section 116 against a debt collector or subagent under this division—
  - (a) the debt collector or subagent has been convicted of—
    - (i) an indictable offence; or
    - (ii) an offence against this Act or the Administration Act;
  - (b) the debt collector or subagent has contravened or breached—
    - (i) this Act; or
    - (ii) a prescribed conduct provision; or
    - (iii) the Administration Act; or
    - (iv) an undertaking given by the debt collector or subagent under part 10, division 2; or
    - (v) a corresponding law;
  - (c) the debt collector or subagent has been disqualified from holding an equivalent licence or registration under a corresponding law;
  - (d) an amount has been paid from the claim fund because the debt collector or subagent did, or omitted to do, something that gave rise to a claim against the fund;
  - (e) the debt collector or subagent fraudulently or improperly obtained, or helped someone else to

- fraudulently or improperly obtain, a licence or registration as a subagent;
- (f) the debt collector or subagent has failed to comply with an order made by a court or QCAT under this Act;
  - (g) the debt collector has carried on, or is carrying on, a regulated business with a business associate who is not a suitable person to—
    - (i) for a collection agent—hold a licence or perform a debt collection activity as authorised under part 2, division 3; or
    - (ii) for a field agent—hold a licence;
  - (h) the debt collector has, in carrying on a regulated business or performing a regulated activity, been incompetent or acted in an unprofessional way;
  - (i) the debt collector has failed to ensure debt collectors or subagents employed by the collector, or employees under the collector’s supervision—
    - (i) are properly supervised in the performance of their duties; or
    - (ii) comply with this Act;
  - (j) the debt collector is an executive officer of a corporation against which QCAT has made an order under section 116;
  - (k) if the debt collector is a corporation—
    - (i) an executive officer of the corporation is not a suitable person to be an executive officer of a corporation; or
    - (ii) an executive officer of the corporation is disqualified from being an executive officer of a corporation that holds a licence;
  - (l) for a field agent—
    - (i) the agent is not a suitable person to hold a licence; or

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- (ii) the agent has failed to comply with a condition of the agent's licence; or
  - (m) for a subagent—the subagent has, in performing a regulated activity, been incompetent or acted in an unprofessional way.
- (2) The chief executive must not start a proceeding under this division against an executive officer under subsection (1)(j) if the chief executive is satisfied—
  - (a) the act or omission relevant to the proceeding against the corporation was done or made without the executive officer's knowledge; and
  - (b) the executive officer could not, with reasonable diligence, have prevented the doing of the act or the making of the omission.

## **115 Starting proceedings**

The chief executive may apply, as provided under the QCAT Act, to QCAT to conduct a proceeding to decide whether grounds exist under section 114 for making an order under section 116 against a debt collector or subagent.

## **116 Orders QCAT may make**

- (1) QCAT may make 1 or more of the following orders against a person in relation to whom QCAT finds grounds exist to make an order under this section—
  - (a) an order reprimanding the person;
  - (b) an order that the person pay to the State, within a stated period, a fine of not more than—
    - (i) for an individual—200 penalty units; or
    - (ii) for a corporation—1000 penalty units;
  - (c) an order that the person pay compensation (inclusive of any commission to which the person is not entitled) to

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- someone else who has suffered loss or damage because of the act or omission that resulted in the finding;
- (d) that the person be disqualified permanently, or for a stated period, from any or all of the following—
    - (i) holding a licence;
    - (ii) being registered as a subagent;
    - (iii) performing a debt collection activity as authorised under part 2, division 3;
  - (e) an order imposing conditions on the person when performing a debt collection activity as authorised under part 2, division 3;
  - (f) another order QCAT considers appropriate to ensure the person complies with this Act.
- (2) If the person is a holder of a licence or registration certificate, QCAT may also make 1 or more of the following orders against the person—
- (a) an order that the person's licence or registration be suspended for a stated period;
  - (b) an order that the person's licence or registration be cancelled;
  - (c) an order, for a field agent who is an executive officer of a corporation, that the agent be disqualified permanently, or for a stated period, from being an executive officer of a corporation that holds a licence;
  - (d) an order imposing conditions on, or amending or revoking the conditions of, the person's licence or registration.
- (3) If QCAT makes an order mentioned in subsection (2)(b) against an individual, QCAT must also make an order that the person be disqualified permanently, or for a stated period, from any or all of the following—
- (a) holding a licence;
  - (b) being registered as a subagent;

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- (c) performing a debt collection activity as authorised under part 2, division 3.
- (4) QCAT may not make an order under this section disqualifying a person from holding a licence or being registered as a subagent if QCAT is satisfied that a court has, for the grounds giving rise to the proceeding—
  - (a) been asked to make an order under section 143(4) disqualifying the person from holding a licence or being registered as a subagent; and
  - (b) declined to do so.
- (5) The chief executive may recover a fine, ordered by QCAT to be paid by the person to the chief executive, as a debt owing to the chief executive in a court with jurisdiction to recover debts up to the amount of the fine.

## **Division 4                      Review proceedings**

### **117      Person dissatisfied with chief executive’s decision may seek review**

A person who is dissatisfied with a decision of the chief executive made under a provision stated in schedule 2 may apply, as provided under the QCAT Act, to QCAT to have the decision reviewed.

### **118      Stay of operation of decisions**

- (1) A decision of the chief executive, other than a decision made under section 67 or 96, being reviewed is stayed for the purpose of securing the effectiveness of the review.
- (2) However, the period of a stay does not extend past the time when QCAT decides the application.



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## 119 QCAT may extend time

- (1) QCAT may extend the time within which to seek review of a decision of the chief executive if it is satisfied—
  - (a) the application is made within 42 days after the person receives notice of the decision to be reviewed; and
  - (b) it is appropriate to extend the time having regard to—
    - (i) the application generally; and
    - (ii) the justice of the matter generally.
- (2) No appeal lies against QCAT's decision under this section.

## Division 5 Other proceedings

### 120 Stopping contraventions

- (1) This section applies if QCAT is satisfied, on application by the chief executive, that a person is doing, or is about to do, something in contravention of this Act.
- (2) QCAT may, by order, prohibit the person who is doing, or is about to do, the thing (the *prohibited person*) from starting or continuing to do the thing.
- (3) QCAT may make an order under this section on the chief executive's application made without notice to the prohibited person but, in that case, QCAT must allow the prohibited person a reasonable opportunity to show cause why the order should not be confirmed.
- (4) If QCAT, after considering the prohibited person's evidence and submissions, if any, and any further evidence or submissions of the chief executive, is not satisfied the order should continue in force, QCAT must rescind the order.
- (5) A person must not contravene an order made under this section.

Maximum penalty—540 penalty units.

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- (6) An order under this section has effect on the giving of a copy of the order to the prohibited person.

## **Division 6                    Chief executive’s right of appeal**

### **121    Appeal**

- (1) The chief executive may appeal to the appeal tribunal against any decision of QCAT under this Act, but only on the ground of error of law.

- (2) In this section—

*appeal tribunal* means QCAT as constituted under the QCAT Act, section 166 for the purposes of an appeal.

## **Part 10                    Injunctions and undertakings**

### **Division 1                Injunctions**

#### **122    Grounds for injunction**

The District Court may grant an injunction against a person if the court is satisfied that the person (a *respondent*) has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) a contravention of this Act or a prescribed conduct provision; or
- (b) attempting to contravene this Act or a prescribed conduct provision; or
- (c) aiding, abetting, counselling or procuring another person to contravene this Act or a prescribed conduct provision; or

- (d) inducing or attempting to induce, whether by threats, promises or otherwise, another person to contravene this Act or a prescribed conduct provision; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by another person of this Act or a prescribed conduct provision; or
- (f) conspiring with other persons to contravene this Act or a prescribed conduct provision.

### **123 Who may apply for injunction**

The following persons may apply to the District Court for an injunction—

- (a) the chief executive;
- (b) a person aggrieved by a respondent's conduct.

### **124 When injunction may be granted**

An injunction under this division may be granted by the District Court against a respondent at any time.

### **125 Court's powers for injunctions**

- (1) The power of the District Court to grant an injunction restraining a respondent from engaging in conduct may be exercised—
  - (a) whether or not it appears to the court that the respondent intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the respondent has previously engaged in conduct of that kind.
- (2) The power of the court to grant an injunction requiring a respondent to do an act or thing may be exercised—
  - (a) whether or not it appears to the court that the respondent intends to fail again, or to continue to fail, to do the act or thing; and

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- (b) whether or not the respondent has previously failed to do the act or thing.
- (3) An interim injunction may be granted under this division until the application is finally decided.
- (4) The District Court may rescind or vary an injunction at any time.

## **126 Terms of injunction**

- (1) The District Court may grant an injunction in the terms the court considers appropriate.
- (2) Without limiting the court's power under subsection (1), an injunction may be granted restraining a respondent from carrying on a regulated business (whether or not the respondent is licensed or the business is carried on as part of, or incidental to, the carrying on of another business)—
  - (a) for a stated period; or
  - (b) except on stated terms and conditions.
- (3) Also, the court may grant an injunction requiring a respondent to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the respondent's contravention of this Act or a prescribed conduct provision.

## **127 Undertakings as to costs**

If the chief executive applies for an injunction under this division, no undertaking as to damages or costs may be required or made.

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## Division 2                      Undertakings

### 128      **Chief executive may seek undertaking after contravention**

- (1) This section applies if the chief executive reasonably believes a person has contravened or been involved in a contravention of this Act or a prescribed conduct provision.
- (2) The chief executive may, by written notice given to the person—
  - (a) state the act or omission the chief executive believes is the contravention; and
  - (b) ask the person to give the chief executive a written undertaking that the person will not continue or repeat the act or omission.
- (3) The chief executive can not start an offence proceeding against the person for the contravention if—
  - (a) the person gives the undertaking; and
  - (b) the chief executive accepts the undertaking; and
  - (c) for a contravention consisting of a series of acts or omissions, the person stops the acts or omissions.
- (4) Subsection (3) does not apply if the chief executive withdraws the undertaking under section 130.

### 129      **Undertaking about other matter**

Without limiting section 128, the chief executive may accept an undertaking given by a person about anything for which the chief executive or an inspector has a function or power.

*Example of type of undertaking for this section—*

an undertaking to publish corrective advertising

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### **130 Variation and withdrawal of undertakings**

- (1) If the chief executive accepts the undertaking, it may be varied or withdrawn at any time by—
  - (a) the person who gave it, but only if the chief executive agrees to the variation or withdrawal; or
  - (b) the chief executive, if the chief executive reasonably believes—
    - (i) that, before it was accepted, the person who gave it contravened this Act, a prescribed conduct provision or PAMDA, in a way unknown to the chief executive; and
    - (ii) had the chief executive known about the contravention, the chief executive would not have accepted the undertaking or would not have accepted it unless its terms were changed.
- (2) The chief executive may also withdraw the undertaking if the chief executive reasonably believes it is no longer necessary.
- (3) If the chief executive varies or withdraws, or agrees to the variation or withdrawal of, the undertaking, the chief executive must give the person written notice of its variation or withdrawal.
- (4) The variation or withdrawal takes effect when written notice of the variation or withdrawal is received by the person.

### **131 Enforcement of undertakings**

- (1) If the chief executive reasonably believes the person who gave the undertaking has contravened a term of an undertaking, the chief executive may apply to the District Court for an order under this section.
- (2) If the District Court is satisfied that the person has contravened the term, the court may make 1 or more of the following orders—
  - (a) an order directing the person to comply with the term;

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- (b) an order directing the person to pay to the State an amount that is not more than the direct or indirect financial benefit obtained by the person from, and reasonably attributable to, the contravention;
  - (c) an order directing the person to pay compensation to another person who has suffered loss or damage because of the contravention;
  - (d) an order directing the person to give a security bond to the State for a stated period;
  - (e) another order the court considers appropriate.
- (3) The District Court may order the forfeiture to the State of all or part of a security bond given by a person under subsection (2)(d) if—
- (a) the chief executive applies to the court for the order; and
  - (b) the court is satisfied that the person contravened the undertaking during the period for which the bond was given.

## **132 Register of undertakings**

- (1) The chief executive must keep a register of undertakings under this division.
- (2) The register must contain a copy of each undertaking.
- (3) A person may, on payment of the fee prescribed under a regulation, inspect, or get a copy of details in, the register—
  - (a) at a place or places decided by the chief executive; or
  - (b) by using a computer.
- (4) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.
- (5) The register may be kept in the way the chief executive considers appropriate.
- (6) The chief executive may publish information contained in the register on the department's website.

## **Part 11**                      **General contraventions and evidentiary matters**

### **Division 1**                  **General contraventions**

#### **133 Wrongful conversion and false accounts**

- (1) This section applies to each of the following persons—
  - (a) a debt collector;
  - (b) a subagent;
  - (c) a person who is not authorised under part 2 to perform a regulated activity, but who acts as if the person were authorised under part 2 to perform the activity.
- (2) The person must not, if the person receives an amount belonging to someone else in performing a regulated activity—
  - (a) dishonestly convert the amount to the person's own or someone else's use; or
  - (b) dishonestly render an account of the amount knowing it to be false in a material particular.

Maximum penalty—1000 penalty units or 5 years imprisonment.

*Note—*

A person may make a claim, under the Administration Act, against the claim fund if the person suffers financial loss because of a contravention of this section.

- (3) For a prosecution under subsection (2)(a), it is enough for the prosecution to prove that the person dishonestly converted an amount belonging to someone else to the person's own use or someone else's use without having to prove that the amount belonged to a particular person.
- (4) If conduct alleged to constitute an offence against subsection (2) is recurrent so that, but for this subsection, each instance



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of the conduct would allegedly constitute a separate offence, 2 or more instances of the conduct may be taken to constitute 1 alleged offence committed over the period stated in the complaint or indictment in relation to the conduct, and may be charged and proceeded against on 1 charge.

- (5) A person must not represent that the person has received an amount in performing a regulated activity if the person knows the person did not receive the amount in performing a regulated activity, including, for example, by rendering an account of the amount.

Maximum penalty for subsection (5)—540 penalty units.

#### **134 Offence to charge fee for providing Act documents**

A debt collector or a debt collector's employee must not charge a fee for the provision or preparation of a document required to be prepared under this Act.

Maximum penalty—200 penalty units or 1 year's imprisonment.

#### **135 Offence to sell, lend or hire out licence etc.**

- (1) A field agent must not—
- (a) sell, lend or hire out the agent's licence to someone else; or
  - (b) notify or advertise that a licence is available for sale, loan or hire to someone else; or
  - (c) permit or allow someone else to hold out that the person is the holder of the licence issued to the agent.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A person must not buy, borrow or hire a field agent's licence.

Maximum penalty—200 penalty units or 2 years imprisonment.

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- (3) If a person who is not the holder of a licence or the holder's substitute has the effective or apparent management or control of a field agent's regulated business, the agent is taken to have lent, and the person is taken to have borrowed, the agent's licence.

**136 Offence to sell, lend or hire out registration certificate etc.**

- (1) A subagent must not—
- (a) sell, lend or hire out the subagent's registration certificate to someone else; or
  - (b) notify or advertise that a registration certificate is available for sale, loan or hire to someone else; or
  - (c) permit or allow someone else to hold out that the person is the holder of the registration certificate issued to the subagent.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A person must not buy, borrow or hire a subagent's registration certificate.

Maximum penalty—200 penalty units or 2 years imprisonment.

**137 False or misleading statements**

A person must not, for this Act, state anything to an official the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

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### **138 False or misleading documents**

- (1) A person must not, for this Act, give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) informs the official, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

- (3) A person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

## **Division 2 Evidentiary matters**

### **139 Evidentiary provisions**

- (1) This section applies to a proceeding under this Act.
- (2) The appointment of an inspector must be presumed unless a party, by reasonable notice, requires proof of it.
- (3) The power of an inspector to do anything under this Act must be presumed unless a party, by reasonable notice, requires proof of it.
- (4) A signature purporting to be the signature of the chief executive is evidence of the signature it purports to be.
- (5) A certificate purporting to be signed by the chief executive, a member of QCAT or the registrar stating any of the following matters is evidence of the matter—

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- (a) a stated document is—
    - (i) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or
    - (ii) a notice, or a copy of a notice, given under this Act; or
    - (iii) a record, or a copy of a record, kept under this Act; or
    - (iv) a document, or a copy of a document, kept under this Act;
  - (b) on a stated day, a stated person—
    - (i) was, or was not, the holder of a stated licence or registration certificate under this Act; or
    - (ii) was, or was not, registered as a subagent under this Act; or
    - (iii) was given a stated notice, order, requirement or direction under this Act.
- (6) In this section—

*registrar* means the principal registrar under the QCAT Act.

#### **140 Entries in debt collector's documents**

An entry in a document kept by or belonging to a debt collector or found in the collector's premises is evidence that the entry has been made by or with the authority of the collector.

#### **141 Proceedings for an offence**

- (1) Subject to subsection (2), a proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* within the later of the following—
  - (a) 1 year after the offence is committed;

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- (b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.
- (2) A proceeding for an indictable offence may be taken, at the prosecution's election—
- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.
- (3) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—
- (a) for the summary conviction of the person; or
- (b) for an examination of witnesses for the charge.
- (4) If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order under the *Justices of the Peace and Commissioners for Declarations Act 1991*.
- (5) If—
- (a) a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted on indictment; or
- (b) the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment;
- the magistrate—
- (c) must not decide the charge as a summary offence; and
- (d) must proceed by way of a committal proceeding.
- (6) If a magistrate acts under subsection (5)—
- (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
- (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (5) is taken to

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be evidence in the proceeding for the committal of the person for trial or sentence; and

- (c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).
- (7) The maximum penalty that may be imposed on a summary conviction of an indictable offence is 200 penalty units or 1 year's imprisonment.
- (8) In this section—  
*indictable offence* means an offence against this Act for which the maximum penalty of imprisonment is more than 2 years.

## **142 Responsibility for acts or omissions of representatives**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—  
*offence* includes a contravention of this Act for which an amount may be ordered by the District Court or QCAT to be paid as a money penalty.  
*representative* means—

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- (a) of a corporation—an executive officer, employee or agent of the corporation; or
  - (b) of an individual—an employee or agent of the individual.

*state of mind*, of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

### **143 Power of court**

- (1) A court may, in addition to any other penalty it may impose, order that a field agent’s licence or a subagent’s registration be suspended for a stated period or cancelled if the agent or subagent has been convicted of an offence against this Act.
- (2) Subsection (3) applies if—
  - (a) the court orders that a field agent’s licence be cancelled and the agent is an individual; or
  - (b) the court orders a subagent’s registration be cancelled.
- (3) The court must also order that the field agent or subagent be disqualified permanently, or for a stated period, from any or all of the following—
  - (a) holding a licence;
  - (b) being registered as a subagent;
  - (c) performing a debt collection activity as authorised under part 2, division 3.
- (4) The court may also order that any person convicted of an offence against this Act be disqualified from holding a licence or being registered as a subagent under this Act permanently or for a stated period.
- (5) The court may make an order under subsection (1) or (4)—
  - (a) on the chief executive’s application; or

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- (b) on its own initiative.
- (6) If an order is made by a court under this section on the court's own initiative, the court must cause a copy of the order to be given to the chief executive.

#### **144 Allegations of false or misleading representations or statements etc.**

In any proceeding for an offence against this Act involving a false or misleading statement, representation or entry, or false or misleading information, it is enough for a charge to state that the statement, representation, entry or information was 'false or misleading'.

## **Part 12 General**

#### **145 Public warning statements**

- (1) The Minister or chief executive may make or issue a public statement identifying and giving warnings or information about any of the following—
  - (a) contraventions of a prescribed conduct provision that have resulted in a QCAT order and the persons who have committed the contraventions;
  - (b) business practices regulated under this Act that are unfair and the persons who engage in the unfair practices;
  - (c) the commission of offences against this Act and the persons who commit the offences.
- (2) The statement may identify particular contraventions, business practices, offences and persons.
- (3) The Minister or chief executive must not make or issue a statement under this section unless satisfied that it is in the public interest to do so.



(4) In this section—

*QCAT order* means an order under section 116.

#### **146 Civil remedies not affected**

Nothing in this Act affects or limits a civil remedy that a person may have against a debt collector or another person for a matter.

#### **147 Criminal Proceeds Confiscation Act 2002 not limited**

Nothing in this Act limits the *Criminal Proceeds Confiscation Act 2002*.

#### **148 Delegation of powers by chief executive**

The chief executive may delegate the chief executive's powers, other than power under section 145, to an appropriately qualified public service employee.

#### **149 Approved forms**

The chief executive may approve forms for use under this Act.

#### **150 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made about the following—
  - (a) fees, including the refunding of fees payable under this Act and the discounts for persons applying for more than 1 licence under this Act, the Agents Acts, or both;
  - (b) imposing penalties for contraventions of regulations of not more than 20 penalty units;
  - (c) imposing limits on out-of-pocket expenses incurred in the performance of regulated activities;

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- (d) the keeping of records, including the form in which records are to be kept;
- (e) the keeping of receipts and evidence of expenditure;
- (f) the period documents required to be kept under this Act are to be kept.

## **Part 13 Transitional provisions**

### **151 Transitional provisions for repeal of PAMDA**

- (1) This section is included for information purposes only.
- (2) The *Property Occupations Act 2014*, part 14 includes provisions of a saving or transitional nature about particular matters arising from the repeal of PAMDA, including, for example, provisions providing for the following—
  - (a) continuation of commercial agent's licences under PAMDA as licences under this Act;
  - (b) continuation of registration certificates as commercial subagents under PAMDA as registration certificates, and registration, under this Act;
  - (c) dealing with undecided applications for commercial agent's licences under PAMDA as applications for licences under this Act;
  - (d) dealing with undecided applications for registration certificates as commercial subagents under PAMDA as applications for registration under this Act;
  - (e) dealing with undecided applications for expired commercial agent's licences or expired registration certificates as commercial subagents under PAMDA;
  - (f) continuation of reviews of decisions under PAMDA;
  - (g) dealing with a person's conduct before the commencement of a kind regulated by this Act.

## **Part 14**                      **Minor and consequential amendments**

### **152**    **Acts amended in sch 1**

Schedule 1 amends the Acts it mentions.

## **Schedule 1            Minor and consequential amendments**

section 152

### **Part 1                    Amendments of this Act**

**1            Long title, from ‘practices,’—**

*omit, insert—*

**practices**

**2            Section 9, ‘schedule 3’—**

*omit, insert—*

**schedule 2**

**3            Section 117, ‘schedule 2’—**

*omit, insert—*

**schedule 1**

**4            Schedule 2—**

*renumber as schedule 1.*

**5            Schedule 3—**

*renumber as schedule 2.*

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## Part 2                      Other amendments

### Fire and Rescue Service Act 1990

**1            Section 126, heading, ‘commercial agent’—**

*omit, insert—*

**debt collector**

**2            Section 126(1), ‘commercial agent (licensed as such under the *Property Agents and Motor Dealers Act 2000*)’—**

*omit, insert—*

debt collector (authorised to perform a debt collection activity under the *Debt Collectors (Field Agents and Collection Agents) Act 2014*)

**3            Section 126(1), ‘347’—**

*omit, insert—*

27

### State Penalties Enforcement Act 1999

**1            Section 10(3)(a), ‘commercial agents’—**

*omit, insert—*

debt collectors

**2            Section 161(2), ‘commercial agent’—**

*omit, insert—*

debt collector

**3**      **Schedule 2, definition *commercial agent*—**  
*omit.*

**4**      **Schedule 2—**  
*insert—*

*debt collector* means a debt collector or subagent under the *Debt Collectors (Field Agents and Collection Agents) Act 2014*.

**5**      **Schedule 2, definition *enforcement officer*, paragraph (c), 'commercial agent'—**  
*omit, insert—*  
debt collector

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**Schedule 2      Decisions subject to review**

## section 117

- section 46(2)      (Chief executive must consider suitability of applicants and field agents)
- section 50(1)      (Chief executive may issue or refuse to issue licence)
- section 53(1)      (Conditions of licence)
- section 55(1)      (Chief executive may renew or refuse to renew licence)
- section 58(1)      (Chief executive may restore or refuse to restore licence)
- section 61(1)(a) or (c)      (Amendment of licence conditions)
- section 67(2)      (Immediate suspension)
- section 70(1)      (Chief executive may appoint or refuse to appoint substitute)
- section 81(2)      (Chief executive must consider suitability of applicants and subagents)
- section 83(1)      (Chief executive may grant or refuse registration)
- section 84(1)      (Conditions of registration)
- section 86(1)      (Chief executive may renew or refuse to renew registration)
- section 89(1)      (Chief executive may restore or refuse to restore registration)
- section 92(1)(a) or (c)      (Amendment of registration conditions)
- section 96(2)      (Immediate suspension)

## Schedule 3 Dictionary

### section 9

**Administration Act** means the *Agents Financial Administration Act 2014*.

**Agents Act** means—

- (a) the *Motor Dealers and Chattel Auctioneers Act 2014*; or
- (b) the *Property Occupations Act 2014*.

**approved form** means a form approved under section 149.

**arrangement** includes agreement, promise, scheme, transaction (with or without consideration), understanding and undertaking (whether express or implied).

**audit period** see the Administration Act, section 33.

**audit report** see the Administration Act, section 33.

**business address**, for an employed field agent, means the address where the agent performs regulated activities under the agent's licence.

**business associate**, of a person, means a person with whom the person carries on, or intends carrying on, a regulated business.

**claim fund** means the claim fund established under the Administration Act, section 78.

**client**, for an activity, means the person to be charged with the reward or expense for performing the activity.

**collection agent** see section 19(3).

**conviction** includes a plea of guilty or a finding of guilt by a court, but does not include a plea of guilty or a finding of guilt by a court if no conviction is recorded by the court.

**corresponding law** means a law of another State or New Zealand that provides for the same matter as this Act or a provision of this Act.



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***criminal history***, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

***criminal history costs requirement*** see section 106(2).

***debt collection activity*** see section 10(2).

***debt collector***—

- (a) generally—means a collection agent or a field agent; and
- (b) for part 9—see section 112.

***disqualified*** means disqualified as a consequence of an order made by QCAT under section 116 or a court under section 143(3) or (4).

***employ*** includes engage on a contract for services or commission and use the services of, whether or not for reward.

***employed field agent*** means a field agent who performs activities under the agent's licence as the employee of someone else.

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

***field agent*** see section 14(1).

***holder***—

- (a) of a licence, means the person in whose name the licence is issued; or
- (b) of a registration certificate, means the person in whose name the certificate is issued.

***in charge***, of a regulated business, see section 12.

***information notice*** means a notice complying with the QCAT Act, section 157(2).

***insolvent under administration*** means a person who is insolvent under administration under the Corporations Act, section 9.

***inspector*** means a person who holds office under the *Fair Trading Inspectors Act 2014* as an inspector for this Act.

***licence*** means a licence issued under section 50.

***licensed***, in relation to a person, means licensed under this Act.

***misleading*** includes deceptive.

***official*** means—

- (a) the chief executive; or
- (b) a public service employee.

***PAMDA*** means the repealed *Property Agents and Motor Dealers Act 2000*.

***prescribed conduct provision*** see section 39.

***principal field agent*** means a field agent who carries on a regulated business on the agent's own behalf.

***process serving activity*** see section 10(4).

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***registered***, in relation to a person, means registered as a subagent under this Act.

***registered office***, of a field agent, see section 13.

***registration certificate*** means a registration certificate issued for the registration of a person as a subagent under section 83(4).

***regulated activity*** see section 10(1).

***regulated business*** see section 11.

**repossession activity** see section 10(3).

**representation** includes a statement, promise, publication and other representation made in any way.

**reward** includes remuneration of any kind, including, for example, any fee, commission or gain.

**serious offence** means any of the following offences punishable by 3 or more years imprisonment—

- (a) an offence involving fraud or dishonesty;
- (b) an offence involving the trafficking of drugs;
- (c) an offence involving the use or threatened use of violence;
- (d) an offence of a sexual nature;
- (e) extortion;
- (f) arson;
- (g) unlawful stalking.

**subagent**—

- (a) generally—see section 18(1); and
- (b) for part 9—see section 112.

**trust account** means a trust account kept under the Administration Act.