

Queensland



Subordinate Legislation 2001 No. 99

Property Agents and Motor Dealers Act 2000

**PROPERTY AGENTS AND MOTOR DEALERS
(MOTOR DEALING PRACTICE CODE OF
CONDUCT) REGULATION 2001**

TABLE OF PROVISIONS

Section		Page
1	Short title	3
2	Commencement	3
3	Code of conduct	3

	SCHEDULE	4
--	---------------------------	---

MOTOR DEALING PRACTICE CODE OF CONDUCT

PART 1—PRELIMINARY

1	Title	4
2	Object	4
3	Definitions	4
4	Compliance with code	5

PART 2—GENERAL RULES OF CONDUCT

5	Knowledge of Act and code	5
6	Fiduciary obligations	5
7	Honesty, fairness and professionalism	5
8	Skill, care and diligence	6
9	Motor dealer to act in client's best interests	6
10	Motor dealer to act in accordance with client's instructions	6
11	Motor dealer to keep client informed of developments	6
12	Motor dealer to ensure employees comply with Act and code	7
13	Representations by employees	7

14	Fraudulent or misleading conduct	8
15	High pressure tactics, harassment or unconscionable conduct	8
16	Claiming membership or endorsement	8
17	Conflict of duty or interest.	8
18	Soliciting through false or misleading advertisements or communications	9

PART 3—RULES SPECIFIC TO MOTOR DEALERS

Division 1—General

19	Finding out or verifying vehicle’s ownership	9
20	Finding out or verifying material facts	9
21	False or misleading representations	9
22	Applications for finance or insurance	10
23	Referral to service provider.	11
24	Contract to purchase used motor vehicle from someone else	11
25	Written record of undertaking	12

Division 2—Consignment selling

26	Application of div 2.	12
27	Motor dealer to open trust account	12
28	Insurance	13
29	Motor dealer’s obligations in relation to client’s motor vehicle	13
30	Duty to obtain maximum sale price	13
31	Notice to customer.	13

Division 3—Use and disclosure of information

32	Confidentiality	14
----	---------------------------	----

PART 4—PUBLICISING CODE

33	Publicity about code	14
----	--------------------------------	----

PART 5—COMPLAINT RESOLUTION

34	Principal licensee to have complaint handling procedure	15
35	Client to be notified of complaint and outcome	16
36	Compliance with complaint handling procedure.	16

1 Short title

This regulation may be cited as the *Property Agents and Motor Dealers (Motor Dealing Practice Code of Conduct) Regulation 2001*.

2 Commencement

This regulation commences on 1 July 2001.

3 Code of conduct

The code of conduct in the schedule is the code of conduct about motor dealing practice prescribed for the Act, section 293.¹

¹ Section 293 (Code of conduct) of the Act

SCHEDULE

MOTOR DEALING PRACTICE CODE OF CONDUCT

section 3

PART 1—PRELIMINARY

1 Title

This code of conduct may be cited as the *Motor Dealing Practice Code of Conduct*.

2 Object

(1) The object of this code is to increase the accountability of motor dealers for their actions in carrying on the business of a motor dealer.

(2) The object is achieved by—

- (a) setting conduct standards for motor dealers; and
- (b) establishing principles for fair trading in motor dealing practice; and
- (c) providing for a system of complaint resolution for complaints about motor dealing practice.

3 Definitions

In this code—

“**client**” means—

- (a) a person who asks a motor dealer to sell the person’s used motor vehicle on consignment; or
- (b) a person, other than an auctioneer or another motor dealer, with whom a motor dealer has entered into a consultancy agreement under which the dealer may negotiate for the purchase or sale of a used motor vehicle for the person.

SCHEDULE (continued)

“customer” means a person, other than a client, with whom a motor dealer deals for the acquisition, purchase or sale of a used motor vehicle.

“motor dealer” includes a motor salesperson.

4 Compliance with code

(1) This code contains provisions with which a motor dealer must comply.²

(2) This code overrides an instruction or request that does not comply with the code from a client or, if the motor dealer is an employee, from the dealer’s employer.

PART 2—GENERAL RULES OF CONDUCT

5 Knowledge of Act and code

A motor dealer must have a reasonable knowledge and understanding of the Act and this code.

6 Fiduciary obligations

A motor dealer must comply with a fiduciary obligation incurred as a motor dealer.

7 Honesty, fairness and professionalism

(1) A motor dealer must act honestly, fairly and professionally in the conduct of a motor dealing practice.

2 Contravention of this code is a ground for—

- starting disciplinary proceedings under the Act, section 496
- obtaining an injunction under the Act, section 565
- seeking an undertaking under the Act, section 569.

SCHEDULE (continued)

(2) Without limiting subsection (1), a motor dealer must treat a customer honestly and fairly.

8 Skill, care and diligence

(1) A motor dealer must exercise reasonable skill, care and diligence in the conduct of a motor dealing practice.

(2) A motor dealer must complete all work for a client as soon as is reasonably practicable.

9 Motor dealer to act in client's best interests

A motor dealer must act in a client's best interests unless it is unlawful or unreasonable to do so.

10 Motor dealer to act in accordance with client's instructions

(1) A motor dealer must act in accordance with a client's instructions unless it is contrary to this code or otherwise unlawful to do so.

(2) However, the price at which a motor dealer offers to sell or buy a used motor vehicle must be in accordance with the client's written instructions.

11 Motor dealer to keep client informed of developments

(1) A motor dealer acting for a client for the sale of a used motor vehicle must keep the client informed of any significant development or issue relating to the motor vehicle.

Example of a thing a motor dealer must keep a client informed of—

The repairs needed to bring the client's vehicle to a saleable condition.

(2) Without limiting subsection (1), a motor dealer must immediately communicate to the client each expression of interest, whether written or oral, about the sale of the vehicle.

(3) However, subsection (2) does not apply if the client has directed otherwise in writing.

SCHEDULE (continued)

12 Motor dealer to ensure employees comply with Act and code

(1) A motor dealer who is a principal licensee must take reasonable steps to ensure a registered employee of the dealer complies with the Act and this code in relation to the dealer's business.

Example—

A motor dealer in whose business the supervisor to employee ratio is so low that supervisors can have little knowledge of what staff are doing or how they are performing their work may need to employ more supervisors.

(2) A motor dealer who is an employed licensee in charge of a motor dealer's business at a place of business must take reasonable steps to ensure a registered employee at the place complies with the Act and this code in relation to the business.

(3) This section applies only to the extent that the Act, section 280(1)³ does not already require a motor dealer to take the steps mentioned in the section.

13 Representations by employees

A motor dealer must take reasonable steps to ensure that an employee of the dealer—

- (a) does not falsely represent that the employee is the holder of a licence in relation to motor dealing, or falsely use a title that suggests the employee is the holder of a licence; or
- (b) whether licensed under the Act or not, does not represent that the employee is the person in effective control of the dealer's business, or use a title that suggests the employee is the person in effective control of the business.

3 Section 280 (Responsibility for acts and omissions of motor salespersons) of the Act

SCHEDULE (continued)

14 Fraudulent or misleading conduct

A motor dealer must not engage in conduct that is fraudulent or misleading in the conduct of a motor dealing practice.⁴

Example—

Representing a loan offered to a client is interest free when the interest charged has been factored into the purchase price of the motor vehicle.

15 High pressure tactics, harassment or unconscionable conduct

A motor dealer must not engage in high pressure tactics, harassment or unconscionable conduct in the conduct of a motor dealing practice.

Examples of unconscionable conduct—

1. Threatening a customer with legal action when the customer has a legal right to terminate or rescind a contract.
2. Wrongly suggesting to a customer that the customer can be sued for the whole purchase price if the customer does not proceed with a contract.

16 Claiming membership or endorsement

A motor dealer must not falsely claim to be a member of, or endorsed by, an organisation or association.

17 Conflict of duty or interest

(1) A motor dealer must not accept an appointment to act, or continue to act, as a motor dealer for a client if doing so will place the dealer's duty or interests in conflict with the client's interests.

(2) However, subsection (1) does not apply if the motor dealer discloses the conflict to the client in writing before accepting the appointment or continuing to act.

⁴ Engaging in conduct of this nature or other unlawful conduct could lead to a prosecution under the Act, for example see section 576 (False representations about mileage).

SCHEDULE (continued)

18 Soliciting through false or misleading advertisements or communications

A motor dealer must not solicit clients or customers through advertisements or other communications the dealer knows are false or misleading.

Example—

Knowingly giving a prospective client an overestimate of the likely selling price of a motor vehicle.

PART 3—RULES SPECIFIC TO MOTOR DEALERS

Division 1—General

19 Finding out or verifying vehicle's ownership

Before a motor dealer offers a used motor vehicle for sale, the dealer must take reasonable steps to find out or verify the vehicle's ownership.

20 Finding out or verifying material facts

(1) A motor dealer appointed for the sale or purchase of a used motor vehicle must take reasonable steps to find out or verify the facts material to the sale or purchase that a prudent motor dealer would have found out or verified in order to avoid error, omission, exaggeration or misrepresentation.

(2) The steps must be taken before the motor dealer offers the vehicle for sale and afterwards as the occasion arises.

21 False or misleading representations

(1) A motor dealer must not make a false or misleading representation about relevant information to a client or customer of the dealer.

(2) In this section—

SCHEDULE (continued)

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

“relevant information” means any of the following—

- (a) the condition, description or fitness for purpose of a used motor vehicle;
- (b) the condition, description or fitness for purpose of accessories or equipment for a used motor vehicle;
- (c) the nature of a document to be signed by a client or customer of the motor dealer;
- (d) the terms of a contract for the purchase of a used motor vehicle;
- (e) the rights and obligations of a client or customer, if the client or customer is a party to a contract with the motor dealer;
- (f) the nature and cost of a warranty sold or provided with a used motor vehicle;
- (g) the terms of a warranty sold or provided with a used motor vehicle;
- (h) the terms of a deposit or option to purchase a used motor vehicle;
- (i) the availability of finance or insurance for the purchase of a used motor vehicle;
- (j) the terms of finance or insurance for the purchase of a used motor vehicle.

22 Applications for finance or insurance

A motor dealer must not knowingly record or help a customer to record false, misleading or incomplete information on an application for—

- (a) finance to purchase a used motor vehicle; or
- (b) motor vehicle insurance.

SCHEDULE (continued)

23 Referral to service provider

(1) A motor dealer who refers a client or customer to a service provider must not falsely represent to the client or customer that the service provider is independent of the dealer.

(2) For subsection (1), a service provider is **“independent”** of a motor dealer if—

- (a) the dealer receives no rebate, discount, commission or benefit for referring a client or customer to the service provider; and
- (b) the dealer does not have a personal or commercial relationship with the service provider.

Examples of relationships for paragraph (b)—

- 1. A family relationship.
- 2. A business relationship other than a casual business relationship.
- 3. A fiduciary relationship.
- 4. A relationship in which 1 person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.

(3) If the service provider is not independent of the motor dealer, the dealer must disclose to the client or customer—

- (a) the nature of any relationship, whether personal or commercial, the dealer has with the service provider; and
- (b) the nature and value of any benefit the dealer may receive, or expects to receive, by referring the client or customer to the service provider.

(4) In this section—

“client” includes a prospective client.

“customer” includes a prospective customer.

24 Contract to purchase used motor vehicle from someone else

(1) This section applies if a motor dealer is aware that a customer has signed a contract with someone else for the purchase of a used motor vehicle.

SCHEDULE (continued)

(2) The motor dealer must not sign a contract with the customer for the purchase of a used motor vehicle from the dealer unless the dealer has—

- (a) advised the customer in writing of the consequences of signing another contract; and
- (b) obtained a written acknowledgement from the customer that the customer understands the consequences.

Example of consequences of signing another contract—

A customer will lose the non-refundable deposit if, at the end of the cooling-off period, the customer does not go ahead with the contract to purchase the vehicle.

25 Written record of undertaking

(1) This section applies if a motor dealer gives a client or customer an undertaking in relation to a used motor vehicle.

(2) The motor dealer must, as soon as practicable after giving the undertaking, give the client or customer a written record of the undertaking.

Example of a written record of an undertaking—

An undertaking recorded on a sales contract or invoice.

(3) The motor dealer must comply with the undertaking unless it is unlawful to do so.

Division 2—Consignment selling

26 Application of div 2

This division applies only to a motor dealer who has been asked by a client to sell the client's used motor vehicle on consignment.

27 Motor dealer to open trust account

Before a motor dealer starts selling used motor vehicles on consignment, the dealer must open a trust account into which to deposit proceeds of sales on behalf of the dealer's clients.

SCHEDULE (continued)

28 Insurance

Before acting for a client, a motor dealer must—

- (a) tell the client that the client is responsible for insuring the used motor vehicle against loss or damage; and
- (b) obtain the client's written acknowledgement of the advice.

29 Motor dealer's obligations in relation to client's motor vehicle

A motor dealer acting for a client must ensure that—

- (a) the client's motor vehicle is properly secured and reasonably protected from damage; and
- (b) no parts are removed from the vehicle without the client's written authorisation.

30 Duty to obtain maximum sale price

A motor dealer acting for a client must obtain the maximum sale price for the client's used motor vehicle.

31 Notice to customer

Before selling a used motor vehicle on consignment, a motor dealer must give a prospective customer of the dealer written notice—

- (a) that the motor vehicle is being sold on consignment; and
- (b) of the implications under the Act of the sale of the motor vehicle to the prospective customer.

Examples of implications of sale of vehicle to customer—

1. There is no statutory warranty.
2. There is no cooling-off period.

SCHEDULE (continued)

Division 3—Use and disclosure of information

32 Confidentiality

(1) A motor dealer must not use or disclose confidential information about a client or customer obtained while acting for the client or dealing with the customer.

(2) Subsection (1) does not apply to information—

- (a) used or disclosed for a purpose authorised in writing by the client or customer; or
- (b) that must be lawfully used or disclosed.

Example of when information must be lawfully used or disclosed—

To comply with legal process.

(3) In this section—

“**client**” includes a former client.

“**customer**” includes a former customer.

“**motor dealer**” includes a former motor dealer.

PART 4—PUBLICISING CODE

33 Publicity about code

(1) A motor dealer who is a principal licensee must prominently display a notice of the existence and availability of this code in the public area of each of the dealer’s offices.

(2) If asked by a client or customer, a motor dealer must promptly tell the client or customer where to obtain a copy of this code.⁵

⁵ This code may be purchased from Goprint or accessed at www.legislation.qld.gov.au.

SCHEDULE (continued)

PART 5—COMPLAINT RESOLUTION

34 Principal licensee to have complaint handling procedure

(1) This section applies to a motor dealer who is a principal licensee.

(2) The motor dealer must have a reasonable, simple and easy to use procedure in place for handling complaints by clients or customers of the dealer.

(3) The motor dealer must have information readily available to inform clients and customers of the procedure.

(4) The information must include the following details—

- (a) how a complaint is to be made;
- (b) when a complaint must be in writing and when it may be oral;
- (c) the person who is to handle the complaint.

(5) The motor dealer must consider every complaint made by a client or customer and—

- (a) accept the complaint, whether wholly or partly; or
- (b) reject the complaint in writing.

(6) If the motor dealer accepts the complaint, whether wholly or partly, and restitution is required to be made to the client or customer (the “**complainant**”), the dealer must arrange for the restitution to be made—

- (a) within 7 days after accepting the complaint; or
- (b) if the dealer and the complainant agree, by a later date.

(7) If the motor dealer rejects the complaint, whether wholly or partly, the dealer must give the complainant written reasons for the rejection.

(8) The notice must be accompanied by a separate document containing—

- (a) a warning that there may be time restrictions on making a claim, including a claim against the fund under the Act;
- (b) a statement that the complainant should consider whether or not to seek legal advice; and

SCHEDULE (continued)

- (c) a statement that the complainant—
- (i) may seek mediation through the dispute resolution procedures of the Department of Justice and Attorney-General; or
 - (ii) may, depending on the nature and amount of the complaint, commence an action against the motor dealer in a small claims tribunal or a court; or
 - (iii) may contact the Office of Fair Trading which may commence disciplinary proceedings, or take other action, under the Act.

(9) The document may also include details about other ways available to the complainant to resolve the complaint.

Example of another way available to resolve the complaint—

An industry dispute resolution scheme may be available to the complainant because of the motor dealer's membership of an organisation.

(10) However, the document must state that participation in an industry dispute resolution scheme is voluntary.

35 Client to be notified of complaint and outcome

(1) This section applies if a complaint is made by a motor dealer's customer and the complaint is dealt with under the complaint handling procedure mentioned in section 34.

- (2) The motor dealer must notify the relevant client of—
- (a) the complaint made by the customer; and
 - (b) the final outcome of the complaint.

36 Compliance with complaint handling procedure

(1) A motor dealer must comply with the complaint handling procedure mentioned in section 34 and the final outcome of the complaint.

Examples of complying with final outcome of complaint—

1. If a motor dealer accepts a complaint that requires a matter to be rectified, the dealer must rectify the matter.

SCHEDULE (continued)

2. A motor dealer must comply with an agreement reached through mediation about the subject matter of the complaint.
 3. A motor dealer must comply with a court decision about the subject matter of the complaint.
- (2)** This section applies subject to any stay granted by a court.
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ENDNOTES

1. Made by the Governor in Council on 28 June 2001.
2. Notified in the gazette on 29 June 2001.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Tourism, Racing and Fair Trading.