

PROPERTY AGENTS AND MOTOR DEALERS BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the legislation

The objective of the Bill is to repeal the *Auctioneers and Agents Act 1971* (“the Act”) and to introduce a new legislative scheme governing the functions of real estate agents, restricted letting agents, auctioneers, property developers, motor dealers and commercial agents. The proposed regulatory framework seeks to achieve a balance between the interests of trading enterprises to freely operate in the marketplace and the needs of consumers for appropriate protection in their dealings with traders.

The Bill introduces provisions to regulate, for the first time, those engaged in the residential property development and marketing industry, to overcome unacceptable marketing practices involving the targeting of consumers to sell investment residential property. Such “marketeering” practices have been causing significant consumer detriment that has not been amenable to redress under the existing provisions of the Act.

Reasons for the objective and how it will be achieved

The Act has been evaluated in the course of a number of reviews conducted at both Commonwealth and State level during the last 10 years. These include the Commonwealth Vocational, Employment, Educational and Training Committee review of partially registered occupations, the Prices Surveillance Authority’s 1992 report on agents’ fees and commissions and the Auctioneers and Agents Review Committee. A common theme emerging from successive reviews of the legislation has been the inability of the 1971 Act to accommodate evolving modern business practices and community expectations for appropriate safeguards in the marketplace.

More recently, the adequacy of the Act to deal with contemporary issues concerning the property marketing industry has been examined by a Property Marketing Working Party, with members representing industry and consumer interests, that was convened in May 1999 to identify unacceptable industry practices and to report to the Minister on possible solutions. At the same time, a study was undertaken by Professor Bill Duncan of the Queensland University of Technology on the existing law applying to real estate marketing practice and regulatory options for reform. Professor Duncan's report, the report of the Working Party and an investigation report on marketeering practices by Phil Dickie were tabled in Parliament on 22 July 1999.

The objective of providing an appropriate balance between the interests and needs of traders and consumers in the marketplace is to be achieved by modernising the applicable law to better deal with the changing business environment and by introducing new consumer protection measures to overcome deficiencies in the existing Act.

Licensing and registration of employees who perform activities in the regulated occupations is retained. However, the different types of licence issued under the Act have been reduced to a single property agents and motor dealers licence, with the separate occupations distinguished by category. A new category of licence and registration is provided for property developers and property developer salespersons. A person who carries on business as a property developer will be required to be licensed if the person completes, within a 12 month period, more than 6 residential land transactions, by selling the property directly to the buyers rather than through a licensed real estate agent, auctioneer or pastoral house.

The entry qualifications for licences are to be based on competency and suitability criteria. Where appropriate for a category of licence or registration, specific educational and competency qualifications will be prescribed by regulation. Barriers to entry to occupations under the existing legislation, such as residence requirements and passing set examinations, have been removed.

Under the Act, a statutory body, the Auctioneers and Agents Committee, performs the administrative function of deciding licensing and registration applications, and the adjudicative function of deciding claims for financial loss against the Auctioneers and Agents Fidelity Guarantee Fund and disciplinary charges against licensees and registered employees. For the Bill, there is a clearer separation of these functions, with the administrative

function of licensing and registering persons engaged in the regulated trading occupations to be performed by the chief executive of the department. The Auctioneers and Agents Committee will be abolished and adjudicative functions will be given to a new Property Agents and Motor Dealers Tribunal. The tribunal will have jurisdiction to review the department's licensing and registration decisions, to determine consumer claims against traders, above a value of \$5 000, to review the department's minor claim decisions, to issue summary orders against a person required to reimburse the Claim Fund and to conduct disciplinary proceedings. Minor claims (defined as claims up to an amount of \$5 000) are to be decided by the chief executive of the department.

Consistent with changes to public sector financial administration and audit practices under the *Financial Administration and Audit Act 1977*, the Auctioneers and Agents Fidelity Guarantee Fund is replaced with a Claim Fund from which successful claims for financial loss, because of a specified contravention of the legislation by a licensee or registered employee, will be paid. Under the Bill, the Treasurer is required to transfer amounts to the fund, appropriated from time to time, to meet claims for any particular financial year. Provision is made for a person whose contravention has caused a relevant financial loss, to reimburse the Claim Fund to the extent of the amount paid to a successful claimant.

The Bill introduces new consumer protection measures in the form of a statutory warranty and a 1 day cooling-off period for used motor vehicles sold by a motor dealer. Used motor vehicles sold at auction by an auctioneer will be subject to the statutory warranty conditions, but the cooling-off period will not apply.

For residential property sales, there is to be a 5 day cooling-off period for any contract that has resulted from an unsolicited approach to a buyer to attend a property information session, however it is described, whose object is to sell residential property for purported investment advantages for the buyer. For sales of residential property not subject to a cooling-off period, the contract will be required to have a warning statement, as the first page of the contract, informing buyers that there is no cooling-off period and recommending that the advice of an independent lawyer be obtained before the contract is signed. Real estate practitioners and property developers will be subject to stringent disclosure obligations to enable potential buyers to be better informed before entering into binding sales contracts for residential property. In particular, the disclosure will be required to inform a buyer of

any personal or commercial relationships the developer or real estate agent has with persons such as mortgage brokers, lawyers and valuers whom they may recommend to the buyer to provide services connected with the buyer's purchase, or persons who have an expectation of referral of business from the developer or agent.

The Bill provides for the setting of maximum commission rates chargeable by agents by regulation. Provision is also made to set the maximum rate of a buyer's premium chargeable by auctioneers by regulation. These powers are included in the legislation as consumer protection measures.

The Bill introduces the concept of enforceable codes of conduct for each of the regulated occupations. A breach of a code of conduct will provide grounds for disciplinary action to be taken against a licensee or registered employee. Provision is also made for injunctions and enforceable undertakings against a licensee as aids to securing compliance with the legislation, and as options to prosecution for breaches of the legislation.

Administrative cost to government of implementing Bill

The regulatory regime proposed in the legislation will involve administrative costs in connection with licensing and registration, compliance, claims investigation and support services to the tribunal at a level comparable to the present level of expenditure under the current Act.

As a result of the abolition of trusts and special funds under the *Financial Administration and Audit Act 1977*, and the consequential changes made to the Auctioneers and Agents Fidelity Guarantee Fund under the *Auctioneers and Agents Act 1971*, the Bill establishes a new fund to be called the Claim Fund. This fund is to consist of the amount standing to the credit of the Auctioneers and Agents Fidelity Guarantee Fund and other amounts that may be transferred by the Treasurer from the consolidated fund. The accounts for the fund will be kept as part of the department's departmental accounts. Payments permitted to be made from the fund will be the amount of all claims allowed against the fund and any amounts transferred from the fund by the Treasurer.

Claimants whose claims are allowed by the chief executive or the tribunal are to have an entitlement to be compensated through the fund. The Treasurer is required to transfer amounts to the fund, appropriated from time to time, to meet claims allowed in a particular financial year. Unlike the

existing Act, there is no power included in the Bill to levy licensees for additional contributions to the fund. However, the limit on the maximum amount that an individual claimant will be able to recover for a single claim will be set by regulation. The total amount payable in respect of all claims arising out of a single contravention or other compensable wrong by a single person will also be set by regulation.

Provision is made for a review of the legislation within 2 years of its commencement. The review will cover assessment of the operation of the claims system and the fund, including recovery of amounts paid out of the fund from persons responsible for claimants' losses.

Fundamental legislative principles

While the provisions of the Bill are consistent generally with the standards required to be met under the *Legislative Standards Act 1992*, issues concerning conformity with fundamental legislative principles may be raised in relation to the following provisions of the Bill.

In the Bill, auctioneers (clause 233) and motor dealers (clause 295) are required to guarantee clear title, at the time that property passes to the buyer, for every used motor vehicle they sell. It is a defence for an auctioneer or a motor dealer prosecuted for failure to guarantee title to prove that the defendant auctioneer or motor dealer took all reasonable steps to ensure compliance. These provisions may be objected to on the grounds that insufficient regard has been given to the rights and liberties of individuals because the onus of proof is reversed. However, the requirement for the auctioneer or dealer to guarantee title is a measure which is aimed at reducing traffic in encumbered or stolen motor vehicles, through the agency of a licensed dealer, to unsuspecting buyers. The steps that an auctioneer or motor dealer may have taken to check the title of a motor vehicle offered for sale is information that would be peculiarly within the knowledge of that person. Without placing a requirement on the person to prove the steps that the person took, it would be very difficult to establish this information from an investigation under the Act for the purposes of a prosecution.

Clause 574 (False representations about property) prohibits a person from making false or misleading representations about property, and places the onus of proving that the person who made the representation had reasonable grounds to do so, on that person. Objection to this provision may be made on the ground that insufficient regard has been given to the

rights and liberties of individuals as the onus of proof is reversed. However, knowledge about the reasonableness or otherwise of a representation made by a person is information which is peculiarly within the knowledge of that person. Without an onus on the person to reveal the grounds upon which the reasonableness of the representation is claimed, it would be not be possible to establish these matters for the purposes of a prosecution.

A related provision is the power granted to the chief executive to require substantiation of claims made about property that contravene clause 574. This provision is similar to section 88B of the *Fair Trading Act 1989*. Objection may be made on the ground that the provision fails to give appropriate protection against self-incrimination. Clause 575 allows the chief executive to issue a written notice requiring a person to provide written proof that supports a claim the person has made about a transaction concerning land. Failure to respond to the notice without reasonable excuse is an offence. It is provided that it is a reasonable excuse to fail to respond on the ground of self-incrimination. However, the provision may be criticised because it requires a person to give information that could lead to prosecution proceedings being brought against the person.

The object of providing the power is to assist investigations of allegations about licensees using false or misleading information, such as real estate agents and property developers pressuring people into signing contracts to buy investment residential property. In a proper case, the chief executive will be able to call upon such a person to provide evidence to substantiate claims made about the benefits, for example, of investing in property. The provision of the power will supplement other reforms to the law governing real estate marketing, such as disclosure requirements, warning notices on contracts and a cooling-off period, that are directed at eliminating unacceptable property marketing practices that cause significant consumer detriment.

Clause 579 makes it an offence for a licensee to ask for or receive commission or reward for a transaction if the amount exceeds the maximum amount prescribed under a regulation. A licensee will not commit an offence if the licensee establishes to the court's satisfaction, on the balance of probabilities, that the expenditure was lawfully incurred. This provision may be objected to on the ground that the onus of proof is reversed.

The object of the clause is to retain the offence under section 78 of the *Auctioneers and Agents Act 1971* which imposes a penalty if a licensee charges more than the maximum prescribed commission rate. As the Bill continues to enable maximum rates of commission or reward to be regulated, the clause is provided as an enforcement measure. A defence for a licensee is provided because information and knowledge about the relevant expenditure that would tend to establish that it was lawfully incurred would be peculiarly within the knowledge of the licensee. The standard of proof required is the civil standard.

Clause 591 requires executive officers of a corporation to ensure that the corporation complies with the Act. If a corporation commits an offence, an executive officer commits the offence of failing to ensure that the corporation complied with the Act, subject to the defences that the executive officer took all reasonable steps to ensure the corporation complied, or that the executive officer was not in a position to influence the conduct of the corporation. Concerns may be raised about this clause on the ground that it fails to pay sufficient regard to the rights and liberties of a person in that it effectively reverses the onus of proof. The clause is included because provisions which a corporation may contravene have the potential to cause substantial consumer detriment and it is appropriate that an executive officer who is in a position to influence the conduct of the corporation, and who is responsible for a contravention, should be accountable.

Consultation

Consultation with key industry and consumer stakeholders has been undertaken during the drafting of the Bill. In addition, extensive public consultation was undertaken during the NCP independent review and public benefit test process that was conducted in February and March 2000.

A consultation draft of the Bill was released for public comment in the first week of August 2000. All submissions received on the consultation draft were considered before finalisation of the Bill for introduction to Parliament.

NOTES ON PROVISIONS**CHAPTER 1—PRELIMINARY****PART 1—INTRODUCTION**

Clause 1 provides the short title of the Act.

Clause 2 provides that the Act is to commence on a day fixed by proclamation.

Clause 3 provides that the Act is to apply to the State, and as far as the legislative power of the State permits, to the Commonwealth and to the other States. However, nothing in the Act is to make the State, the Commonwealth or any other State, liable to be prosecuted for an offence.

Clause 4 exempts from compliance with the requirements of Chapter 7 (Auctioneers), the following types of sale—

- a sale ordered by the sheriff under a writ or process issued by a court;
- a sale made under a rule, order or judgment of the Supreme or District Court;
- a sale in accordance with an order or a process issued by a court, judge or justice or the registrar of the State Penalties Enforcement Registry for recovery of a fine, penalty or award;
- a sale of an animal lawfully impounded and sold under a law about impounding;
- a sale of goods distrained for rent or arrears of rent;
- a sale by postal bid of stamps and coins.

Clause 5 provides exemptions for certain public officials from compliance with the Act as follows—

- a bailiff serving a writ, claim, application, summons or other process is not required to be licensed as a commercial agent under section 354;

- a prescribed officer (defined as an accountable officer under the *Financial Administration and Audit Act 1977* or a public service officer) is not required to comply with Chapter 12 (Accounts and funds) if another Act makes provision for the way the prescribed officer must deal with trust moneys.

Clause 6 provides that Chapter 5 (Real estate agents), Chapter 6 (Pastoral houses), Chapter 9 (Motor dealers) and Chapter 10 (Commercial agents) do not apply to a financial institution or a trustee company.

Clause 7 provides an exemption for pastoral houses from compliance with the trust account provisions of Chapter 12 (Accounts and funds) except in relation to the sale of rural land and the auction of non-rural land. Under the *Auctioneers and Agents Act 1971*, pastoral houses are excused from compliance with trust account requirements in relation to all transactions. For the specified real estate transactions, pastoral houses now will be placed in the same position as other agents who deal in real property.

Clause 8 exempts livestock agents that provide del credere payment facilities to their clients from compliance with Chapter 12 (Accounts and funds) if, before the sale, the agent and the seller make an agreement in writing under which the agent guarantees payment of the purchase price to the seller. Under the *Auctioneers and Agents Act 1971*, pastoral houses have the advantage of being able to offer del credere terms to clients for livestock sales because they are excluded from compliance with trust account requirements. This provision will extend the option of operating under a del credere accounting system to all livestock agents thereby removing the inconsistency in the way the legislation treats pastoral houses as opposed to other livestock agents.

Clause 9 provides an exemption from Chapter 4 (Restricted letting agents) and Chapter 5 (Real estate agents) for nonprofit corporations that provide or locate affordable rental housing or approved supported accommodation under funding or management provided by the Commonwealth, the State or a local government. The exemption applies only if the nonprofit corporation is not otherwise carrying on business as a restricted letting agent or a real estate agent.

PART 2—OBJECT

Clause 10 sets out the object of the Act and the ways the object is to be achieved.

PART 3—INTERPRETATION

Clause 11 provides that the dictionary in schedule 3 defines particular words used in the Act.

Clause 12 provides that a note in the text of the Act is part of the Act.

Clause 13 explains the meaning of “beneficial interest” by describing particular cases in which a licensee, a registered employee of a licensee and their “associates” will be taken to have a beneficial interest for the application of conduct provisions relating to real estate agents, restricted letting agents, auctioneers, motor dealers and commercial agents. The concept of “beneficial interest” is not relevant to property marketer licensees as they do not act as agents, but deal in property in which they have a direct pecuniary interest. Consequently, this category of licensee and registered employee is excluded from the ambit of the cases described.

The term “associate” is defined in the dictionary to include a person’s spouse, de facto spouse, parent, brother, sister, child and step-child. It also includes the child or step-child of the person’s spouse or de facto spouse. The definition is intended to have a broader application than the term “prescribed relative” used in the *Auctioneers and Agents Act 1971*.

Clause 14 gives the meaning of the phrase “in charge” as it is used in the context of a person being “in charge of a licensee’s business”. A person will be taken to be “in charge” of a licensee’s business at a place where the licensee carries on business only in the situation where the person is responsible for personally supervising, managing and controlling the conduct of the licensee’s business at the place.

Clause 15 gives the meaning of “motor vehicle” for the purposes of the Act and lists vehicles that are not included in the definition.

Clause 16 provides the meaning of the phrase “open listing” as it applies to the appointment of a real estate agent or pastoral house by a seller for the purpose of selling a property and sets out the rights retained by a seller under such an appointment.

Clause 17 defines the term “residential property”. The phrase “place of residence”, used in the definition, is a term defined in the dictionary in schedule 3.

Clause 18 gives the meaning of “unsolicited invitation” as it applies to an invitation to a person to attend a property information session and provides examples of invitations which are not “unsolicited invitations”.

Clause 19 explains that the only difference between a “sole agency” appointment and an “exclusive agency” appointment relates to the entitlement of an agent to receive commission on the sale of the relevant property. For a “sole agency”, an agent would not be entitled to be remunerated in accordance with the appointment if the seller and not the agent were the effective cause of the sale. With an “exclusive agency”, the agent would be entitled to be remunerated in accordance with the appointment whether or not the agent were the effective cause of the sale.

CHAPTER 2—LICENSING

PART 1—CATEGORIES OF LICENCE

Clause 20 sets out the categories of licence that may be issued as a property agents and motor dealers licence.

PART 2—HOW TO OBTAIN A LICENCE

Clause 21 sets out the steps involved for an applicant in obtaining a licence. It also provides that the chief executive is to decide an application after having had regard, amongst other things, to the person’s suitability and the person’s eligibility to hold a licence.

PART 3—APPLICATIONS FOR LICENCE

Clause 22 details the requirements for a licence application, including use of the approved form, provision of information required by the chief executive, payment of the relevant fees, and, for an individual, 2 recent colour photographs of the applicant.

Clause 23 requires an applicant to specify the applicant's proposed business address on the licence application. The business address must be specified as a place where a document can be served personally. A post office box is not acceptable as a business address.

Clause 24 provides that the chief executive may require an applicant to give information or material the chief executive reasonably considers is needed for considering the applicant's licence application. The request must be made by written notice, stating a reasonable time within which the information or material must be supplied. An applicant who fails to supply the information or material within the stated time is to be taken to have withdrawn the licence application.

Clause 25 requires an applicant intending to carry on business under the licence applied for, to state in the licence application the name and business address of an auditor, if the applicant will be required to keep a trust account. The applicant must provide evidence that the named auditor has agreed to act in that capacity for the applicant.

PART 4—SUITABILITY OF APPLICANTS AND LICENSEES

Clause 26 states, for individuals, the persons who are not suitable to hold a licence and therefore, who can not hold a licence under the Act.

Clause 27 states, for corporations, the corporations that are not suitable to hold a licence and therefore, that can not hold a licence under the Act.

Clause 28 sets out the matters that the chief executive must consider when deciding a person's suitability to hold a licence. For all applicants, the person's character, business associates and previous licence record are to be considered, including whether a claim has been paid out of the fund because of something the person did or omitted to do, and whether the person has

ever been disqualified under the Act, the repealed Act or a corresponding law from being a licensee.

In the case of individuals, the chief executive must consider also the person's criminal history, solvency record, convictions (if any) for an offence under the Act, the repealed Act or another occupational licensing Act, capability of satisfactorily performing a licensee's activities and whether the person's name is entered in the register of disqualified company directors and other officers under the Corporations Law.

For a corporation, the chief executive must consider also whether the corporation has been placed in receivership or liquidation, the solvency record of the executive officers of the corporation, whether any executive officers have been convicted of an offence under the Act or the repealed Act and whether each of the executive officers is a suitable person to hold a licence.

If the chief executive decides that an applicant is not a suitable person to hold a licence, the chief executive must give the applicant an information notice stating the decision, the reasons for the decision, and the rights of the applicant to apply for a review of the decision to the tribunal.

Clause 29 states that the corporation sole of The Public Trustee of Queensland is taken to be a suitable person to hold a licence. The inquiry required for applicants for a licence is therefore not necessary.

Clause 30 states that the chief executive of a department of government is taken to be a suitable person to hold a licence. The inquiry required for applicants for a licence is therefore not necessary.

Clause 31 states that the Queensland Housing Commission is taken to be a suitable person to hold a licence. The inquiry required for applicants for a licence is therefore not necessary.

Clause 32 provides that, when the chief executive makes investigations about the suitability of an applicant, the chief executive may make an investigation about the applicant, or in the case of a renewal or restoration application, the licensee. If the applicant or licensee is a corporation, an investigation may be made about the corporation's executive officers. An investigation may also be made about the business associates of the applicant or licensee.

For the investigation, the chief executive may ask the commissioner of the police service for a written report about the criminal history of any of the persons the chief executive is empowered to investigate. The commissioner of the police service is required, when asked by the chief executive, to provide a criminal history in the commissioner's possession or to which the commissioner has access.

The term "criminal history" is defined in the dictionary to mean the convictions recorded against a person for offences, whether in Queensland or elsewhere in Australia.

Clause 33 prohibits an officer, employee or agent of the department from directly or indirectly disclosing a person's criminal history report or any information contained in the report.

The chief executive is required to destroy a criminal history report as soon as practicable after considering the person's suitability for a licence.

Clause 34 gives power to the chief executive to require an applicant, by written notice, to give information or material about the applicant's suitability that the chief executive reasonably considers is needed to establish the applicant's suitability. The written notice must include a stated reasonable time within which the applicant must comply.

If an applicant fails to provide the information or material within the stated reasonable time, the applicant is taken to have withdrawn the application.

PART 5—ELIGIBILITY FOR LICENCE

Division 1—Restricted letting agent's licence

Clause 35 sets out the eligibility requirements to be satisfied by persons who apply for a restricted letting agent's licence.

If the applicant is an individual, the applicant must be at least 18 years old and must have the educational or other qualifications prescribed by regulation for a restricted letting agent. An applicant who has comparable qualifications or who, within the previous 2 years, has been licensed as a restricted letting agent or real estate agent under the Act, or who has held a comparable licence under the repealed Act, may be accepted by the chief

executive as having satisfied the educational or other qualifications requirements.

An individual applicant must also satisfy the chief executive that the applicant—

- has approval from the body corporate of a building complex, for the applicant, or the person by whom the applicant is to be employed, to carry on a business of letting lots in the building complex;
- resides, or will reside if issued with a licence, in the building complex (or if the applicant proposes to perform the activities of a restricted letting agent for more than 1 building complex, resides, or will reside, in 1 of the building complexes); and
- has a place in the building complex, or will have a place if issued with a licence, that will be the applicant's registered office.

An applicant that is a corporation must satisfy the chief executive that—

- the applicant has approval from the body corporate of a building complex for the applicant to carry on a business of letting lots in the building complex;
- a director of the corporation is a restricted letting agent; and
- the individual who will perform the activities of a restricted letting agent for the corporation meets the eligibility requirements for an individual to be licensed as a restricted letting agent.

A director of the corporation who does not intend to perform the activities of a restricted letting agent will not be required to reside in the building complex to which the corporation's licence applies.

Division 2—Real estate agent's licence

Clause 36 sets out the eligibility requirements to be satisfied by persons who apply for a real estate agent's licence.

If the applicant is an individual, the applicant must be at least 18 years old and must have the educational or other qualifications prescribed by regulation for a real estate agent. An applicant who has comparable qualifications or who, within the previous 2 years, has been licensed as a

real estate agent under the Act, or who has held a comparable licence under the repealed Act, may be accepted by the chief executive as having satisfied the educational or other qualifications requirements.

An applicant that is a corporation must satisfy the chief executive that a director of the corporation is a real estate agent.

Division 3—Pastoral house licenses

Clause 37 provides that a pastoral house licence may be obtained only by a corporation that is—

- a corporation within the meaning of the Corporations Law; and
- the subject of an order under section 11 of the *Banking Act 1959* (Cwlth); and
- a registered corporation under the *Financial Corporations Act 1974* (Cwlth) within the category for pastoral finance corporations.

The corporation must also satisfy the chief executive that a director of the corporation is a pastoral house director.

Clause 38 sets out the eligibility requirements to be satisfied by persons who apply for a pastoral house director's licence.

The applicant must be an individual who is at least 18 years old and who has the educational or other qualifications prescribed by regulation for a pastoral house director's licence. The applicant must have been employed by a pastoral house for at least the period prescribed under a regulation and must be, or must satisfy the chief executive that the applicant will be, when the licence is issued, a director of the pastoral house stated in the application.

Clause 39 sets out the eligibility requirements to be satisfied by persons who apply for a pastoral house manager's licence.

The applicant must be an individual who is at least 18 years old and who has the educational or other qualifications prescribed by regulation for a pastoral house manager's licence. The applicant must have been employed by a pastoral house for at least the period prescribed under a regulation.

Clause 40 sets out the eligibility requirements to be satisfied by persons who apply for a pastoral house auctioneer's licence.

The applicant must be an individual who is at least 18 years old and who has the educational or other qualifications prescribed by regulation for a pastoral house auctioneer's licence. The applicant must have been employed by a pastoral house for at least the period prescribed under a regulation.

Division 4—Auctioneer's licences

Clause 41 sets out the eligibility requirements to be satisfied by persons who apply for an auctioneer's licence.

If the applicant is an individual, the applicant must be at least 18 years old and must have the educational or other qualifications prescribed by regulation for an auctioneer. An applicant who has comparable qualifications or who, within the previous 2 years, has been licensed as an auctioneer under the Act, or who has held a comparable licence under the repealed Act, may be accepted by the chief executive as having satisfied the educational or other qualifications requirements.

An applicant that is a corporation must satisfy the chief executive that a director of the corporation is an auctioneer.

Division 5—Property developer's licence

Clause 42 sets out the eligibility requirements to be satisfied by persons who apply for a property developer's licence.

If the applicant is an individual, the applicant must be at least 18 years old..

If the applicant is a corporation, the applicant must satisfy the chief executive that a director of the corporation is, or will be when the licence issues, a property developer director.

Clause 43 sets out the eligibility requirements to be satisfied by persons who apply for a property developer director's licence.

The applicant must be an individual who is at least 18 years old and must satisfy the chief executive that the applicant will be, when the licence is issued, a director of the property developer stated in the application.

Division 6—Motor dealer’s licence

Clause 44 sets out the eligibility requirements to be satisfied by persons who apply for a motor dealer’s licence.

If the applicant is an individual, the applicant must be at least 18 years old and must have the educational or other qualifications prescribed by regulation for a motor dealer. An applicant who has comparable qualifications or who, within the previous 2 years, has been licensed as a motor dealer under the Act, or who has held a comparable licence under the repealed Act, may be accepted by the chief executive as having satisfied the educational or other qualifications requirements.

An applicant that is a corporation must satisfy the chief executive that a director of the corporation is a motor dealer.

Division 7—Commercial agent’s licence

Clause 45 sets out the eligibility requirements to be satisfied by persons who apply for a commercial agent’s licence.

If the applicant is an individual, the applicant must be at least 18 years old and must have the educational or other qualifications prescribed by regulation for a commercial agent. An applicant who has comparable qualifications or who, within the previous 2 years, has been licensed as a commercial agent under the Act, or who has held a comparable licence under the repealed Act, may be accepted by the chief executive as having satisfied the educational or other qualifications requirements.

An applicant that is a corporation must satisfy the chief executive that a director of the corporation is a commercial agent

Division 8—Chief executives and corporations sole

Clause 46 provides that public trustee, as a corporation sole (the “corporate trustee”), is taken to be eligible for a restricted letting agent’s licence, a real estate agent’s licence, an auctioneer’s licence, a property marketer’s licence, a motor dealer’s licence and a commercial agent’s licence.

Clause 47 provides that the chief executive of a department is taken to be eligible for a restricted letting agent’s licence, a real estate agent’s licence, an auctioneer’s licence, a property marketer’s licence, a motor dealer’s licence and a commercial agent’s licence.

Clause 48 provides that the Queensland Housing Commission as a corporation sole is taken to be eligible for a restricted letting agent’s licence, a real estate agent’s licence, an auctioneer’s licence and a property developer’s licence.

PART 6—ISSUE OF LICENCES

Clause 49 provides that the chief executive may issue or refuse to issue a licence to an applicant.

A licence may be issued to an applicant only if the chief executive is satisfied of the applicant’s suitability and eligibility for a licence. The chief executive must also be satisfied that the application was properly made. If the applicant intends to carry on business in partnership or in conjunction with other persons, each of those other persons must be a suitable person for a licence. If the applicant is a corporation, each executive officer of the corporation must be a suitable person for a licence.

If the chief executive refuses to issue a licence to an applicant, within 14 days of the decision, the chief executive must give the applicant an information notice advising the applicant of the decision and reasons for the decision and the applicant’s right to apply to the tribunal for a review of the decision.

A person who has been refused a licence is not permitted to make another application for a licence for 3 months after the date the chief executive gives the information notice. If the person applies to the tribunal

for a review of the chief executive's decision and the tribunal confirms the chief executive's decision, the person may not make another application until 3 months after the date of the tribunal's decision.

Clause 50 provides that a licence issued to the public trustee as a corporation sole is to be issued in the name "The Public Trustee of Queensland".

Clause 51 provides that a licence issued to the chief executive of a department is to be issued in the name "The Chief Executive of the (name of department)". The licence is to be taken as being issued to the chief executive for the time being. As a licensee, the chief executive is to be taken as representing the State.

Clause 52 provides that a licence issued to the Queensland Housing Commission is to be issued in the name "The Queensland Housing Commission".

Clause 53 gives power to the chief executive to issue a licence on conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence. A condition may limit or prohibit the performance of an activity authorised by the Act or require a licensee to hold insurance of a kind and in an amount prescribed under a regulation.

If the chief executive decides to issue a licence subject to a condition, within 14 days of the decision, the chief executive must give the applicant an information notice advising the applicant of the decision and reasons for the decision and the applicant's right to apply to the tribunal for a review of the decision.

PART 7—RESTRICTIONS ON PERFORMING ACTIVITIES UNDER LICENCES

Clause 54 provides that a corporation may perform an activity under a licence only if the activity may be performed by a licensed director of the corporation under the director's licence. If the corporation performs an activity which it is not so authorised to perform, it is taken to have acted without a licence for the performance of the activity.

However, a corporation that holds a real estate agent's, pastoral house or motor dealer's licence is permitted to sell property by way of auction if the auction is performed by an auctioneer who is an employed licensee of the corporation.

Clause 55 provides that an individual who is an employed licensee may perform an activity authorised under the individual's licence only if the activity may be performed by the individual's employer under the employer's licence. If the individual performs an activity which the individual is not so authorised to perform, the individual is taken to have acted without a licence for the performance of the activity.

However, an individual who holds an auctioneer's licence is permitted to sell property by way of auction for the individual's licensed employer.

Clause 56 provides that if a licensee performs an activity in breach of a licence condition, the licensee is taken to have acted without a licence for the performance of the activity.

PART 8—RENEWAL AND RESTORATION OF LICENCES

Division 1—Renewal

Clause 57 makes provision for renewal of a licence by application before the licence expires. The application must be made in the approved form, stating the term of the licence being applied for and the names and addresses of the licensee's business associates. It must be accompanied by the application fee, the licence renewal fee and, for an individual applicant, 2 recent colour photographs of the prescribed size.

For licensees, other than property marketers, the application must be accompanied by an audit report for all trust accounts operated by the licensee during the relevant audit period or by a statutory declaration by the licensee that the licensee did not operate a trust account during the relevant audit period.

The licensee must also satisfy the chief executive that the licensee has actively carried out the activities authorised under the license for a period, or within a period prescribed.

Clause 58 provides that the chief executive may renew or refuse to renew a licence.

A licence may be renewed only if the chief executive is satisfied that—

- the licensee is a suitable person for a licence. If the licensee carries on business in partnership or in conjunction with other persons, each of those other persons must be a suitable person for a licence. If the licensee is a corporation, each executive officer of the corporation must be a suitable person for a licence;
- the application was properly made;
- the licensee has actively carried out the activities authorised under the licence for a period, or within a period prescribed; and
- the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.

If the chief executive refuses to renew a licence, within 14 days of the decision, the chief executive must give the licensee an information notice advising the licensee of the decision and reasons for the decision and the licensee's right to apply to the tribunal for a review of the decision.

Clause 59 provides that if a licensee makes a renewal application under section 57, the licensee's licence is taken to continue in force from the day that it would have expired, until the licensee's application is decided or until the application is withdrawn by the licensee or is taken to have been withdrawn under section 34.

Division 2—Restoration

Clause 60 provides that if a licence expires, a licensee may apply to have the licence restored.

The application must be made within 3 months of the expiry, in the approved form, stating the term of the licence being applied for and the names and addresses of the licensee's business associates. It must be accompanied by the application fee, the licence renewal fee, the licence restoration fee and, for an individual applicant, 2 recent colour photographs of the prescribed size.

For licensees, other than property marketers, the application must be accompanied by an audit report for all trust accounts operated by the licensee during the relevant audit period or by a statutory declaration by the licensee that the licensee did not operate a trust account during the relevant audit period.

The licensee must also satisfy the chief executive that the licensee has actively carried out the activities authorised under the licence for a period, or within a period prescribed.

Clause 61 provides that the chief executive may restore or refuse to restore a licence.

A licence may be restored only if the chief executive is satisfied that—

- the licensee is a suitable person for a licence. If the licensee carries on business in partnership or in conjunction with other persons, each of those other persons must be a suitable person for a licence. If the licensee is a corporation, each executive officer of the corporation must be a suitable person for a licence;
- the application was properly made;
- the licensee has actively carried out the activities authorised under the licence for a period, or within a period prescribed; and
- the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.

If the chief executive refuses to restore a licence, within 14 days of the decision, the chief executive must give the licensee an information notice advising the licensee of the decision and reasons for the decision and the licensee's right to apply to the tribunal for a review of the decision.

Apart from section 62, if the chief executive restores the licence, the licence is to be taken to have been renewed on the day it would have expired.

Clause 62 provides that if a licensee makes a restoration application under section 60, the licensee's licence is taken to continue in force from the day that it would have expired, until the licensee's application is decided or until the application is withdrawn by the licensee or is taken to have been withdrawn under section 34.

PART 9—DEALINGS WITH LICENCES***Division 1—Transfer of licence***

Clause 63 states that a licence may not be transferred.

Division 2—Substitute licences

Clause 64 makes provision for an individual who is a principal licensee to appoint, or to have the chief executive appoint, a substitute licensee to take the licensee's place during the licensee's absence from the licensee's registered office.

A principal licensee is given power to appoint an adult person to be a substitute licensee for a period not longer than 30 days, if the licensee will be absent for the period of appointment and the appointee consents. If, as a condition of the licensee's licence, the licensee is required to hold insurance, the appointee must have insurance coverage that complies with that condition. The principal licensee must ensure that the appointment, the period of appointment and the appointee's consent are set out in writing. This written evidence must be kept at the licensee's registered office and be made available for immediate inspection by an inspector if requested.

If a principal licensee proposes to be absent from the principal licensee's registered office for a period of more than 30 days, the principal licensee must apply to the chief executive for the appointment of a nominated person as the principal licensee's substitute licensee. The application must be made in the approved form and be accompanied by the prescribed fee, the nominated person's signed consent to the appointment and sufficient information to allow the chief executive to decide whether the nominated person is a suitable person to hold a licence and sufficiently qualified to perform the licensee's activities during the period.

Clause 65 makes provision for a person who is a principal licensee with an employed licensee in charge of the principal licensee's business at a place, to appoint, or to have the chief executive appoint, a substitute licensee to take the employed licensee's place during the employed licensee's absence from the place for a reason other than the employed licensee's resignation or termination of employment.

A principal licensee is given power to appoint an adult person to be a substitute licensee for the employed licensee for a period not longer than 30 days, if the employed licensee will be absent for the period of appointment and the appointee consents. The principal licensee must ensure that the appointment, the period of appointment and the appointee's consent are set out in writing. This written evidence must be kept at the principal licensee's registered office and be made available for immediate inspection by an inspector if requested.

If an employed licensee proposes to be absent from the principal licensee's business at a place for a period of more than 30 days, the principal licensee must apply to the chief executive for the appointment of a nominated person as the employed licensee's substitute licensee. The application must be made in the approved form and be accompanied by the prescribed fee, the nominated person's signed consent to the appointment and sufficient information to allow the chief executive to decide whether the nominated person is a suitable person to hold a licence and sufficiently qualified to perform the employed licensee's activities during the period.

Clause 66 makes provision for a pastoral house with a pastoral house manager in charge of the pastoral house's business at a place, to appoint, or to have the chief executive appoint, a substitute licensee to take the pastoral house manager's place during the pastoral house manager's absence from the place for a reason other than the pastoral house manager's resignation or termination of employment.

A pastoral house is given power to appoint an adult person to be a substitute licensee for the pastoral house manager for a period not longer than 30 days, if the pastoral house manager will be absent for the period of appointment and the appointee consents. The pastoral house must ensure that the appointment, the period of appointment and the appointee's consent are set out in writing. This written evidence must be kept at the pastoral house's registered office and be made available for immediate inspection by an inspector if requested.

If a pastoral house manager proposes to be absent from the pastoral house's business at a place for a period of more than 30 days, the pastoral house must apply to the chief executive for the appointment of a nominated person as the pastoral house manager's substitute licensee. The application must be made in the approved form and be accompanied by the prescribed fee, the nominated person's signed consent to the appointment and sufficient information to allow the chief executive to decide whether the

nominated person is a suitable person to hold a licence and sufficiently qualified to perform the pastoral house manager's activities during the period.

Clause 67 provides that the chief executive may appoint a nominated person as a substitute licensee only if satisfied that the nominated person is a suitable person to hold a licence, is sufficiently qualified to perform the licensee's activities during the period of the licensee's absence and if, as a condition of the licensee's licence, the licensee is required to hold insurance, the appointee has insurance coverage that complies with that condition.

If the chief executive refuses to appoint a nominated person as a substitute licensee, within 14 days of the decision, the chief executive must give the licensee an information notice advising the licensee of the decision and reasons for the decision and the licensee's right to apply to the tribunal for a review of the decision.

If the chief executive appoints a nominated person as a substitute licensee, the chief executive may make the appointment subject to conditions the chief executive considers appropriate.

The chief executive must give written notice of the appointment to the licensee and the substitute licensee.

Clause 68 provides for matters about a substitute licensee.

When a substitute licensee is appointed, the substitute licensee is to be taken as the licensee for the duration of the appointment and must act for the licensee for whom the substitute is appointed. A licensee for whom a substitute has been appointed must not act under the licensee's licence while the substitute licensee's appointment continues.

Provision is made for the substitute licensee's appointment to end when—

- the period of appointment ends; or
- the licensee gives written notice to end the appointment from the date stated in the notice to the substitute licensee, and where the appointment has been made by the chief executive, also to the chief executive; or
- the substitute licensee gives written notice to end the appointment from the date stated in the notice to the licensee, and where the appointment has been made by the chief executive, also to the chief executive; or

- the chief executive revokes the substitute licensee's appointment; or
- the licensee's licence has been suspended or cancelled; or
- the licensee, if a principal licensee, stops carrying on business as a licensee.

Clause 69 sets the limits that are to apply on substitution periods.

Division 3—General

Clause 70 provides that the chief executive may amend the conditions on a licence on the licensee's application, or on the order of the tribunal after a disciplinary hearing, or on the chief executive's initiative.

An application by a licensee for amendment of conditions must be made in the approved form and be accompanied by the prescribed fee. Before making the amendment applied for, the chief executive must be satisfied that the licensee meets the eligibility requirements the chief executive specifies as relevant to the amendment.

Before the chief executive amends a condition on the chief executive's initiative, the chief executive is required to give written notice of the particulars of the proposed amendment to the licensee and to advise the licensee that the licensee may make written submissions about the proposed amendment to the chief executive before a stated day, not later than 14 days after the notice is given. The chief executive must have regard to any submissions made by the licensee before the stated day.

The requirement to give notice to the licensee is not to apply if the amendment must be made urgently to avoid potential claims against the fund, or to ensure compliance with the Act.

If the chief executive decides to amend licence conditions, the chief executive must give written notice of the amendment to the licensee. An amendment takes effect on the day that written notice of the amendment is given to the licensee or, if a later date is stated in the notice, the later date.

If the chief executive refuses to make an amendment requested by a licensee, within 14 days of the decision, the chief executive must give the licensee an information notice advising the licensee of the decision and reasons for the decision and the licensee's right to apply to the tribunal for a review of the decision.

Clause 71 provides for amendment of conditions on a licence and return of a licence that has been suspended or cancelled.

If the chief executive amends the conditions on a licence and requests the licensee to produce the licence for amendment, the licensee must produce the licence for amendment within a stated period of not less than 14 days unless the person has a reasonable excuse.

A person whose licence has been suspended or cancelled must return the licence to the chief executive within 14 days after the suspension or cancellation unless the person has a reasonable excuse.

Clause 72 allows a licensee to surrender the licensee's licence by giving written notice to the chief executive and returning the licence. The licence stops having effect on the day it is surrendered.

Clause 73 allows a licensee to ask the chief executive to deactivate the licensee's licence by applying in the approved form, accompanied by the licence and the prescribed fee. When the application, the licence and the fee are received by the chief executive, the licence is taken to be deactivated. A licensee is not authorised to perform an activity under the licence when it is deactivated. Deactivation does not affect the term of the licence or entitle the licensee to a refund of fees for the balance of the term. A deactivated licence may be renewed or restored as a deactivated licence under a reduced fee as prescribed.

A licensee may request the chief executive to reactivate a deactivated licence by application in the approved form, accompanied by the prescribed fee. However, if the licence has been deactivated for 5 years or longer, the licence may be reactivated only if the licensee satisfies any educational or other requirements prescribed for the licence.

PART 10—IMMEDIATE SUSPENSION AND CANCELLATION OF LICENCES

Clause 74 permits the chief executive to immediately suspend a licence for a period of not more than 28 days if —

- the chief executive considers on reasonable grounds that an irregularity or deficiency exists in a licensee's trust account; or

- a receiver is appointed under the Act over property held by a licensee, or held by another person for the licensee, or recoverable by a licensee.

The chief executive may suspend the licence of a licensee, or a licence held by an employee of the licensee if the chief executive considers, on reasonable grounds, that the employee is responsible for the irregularity or deficiency in the licensee's trust account. This power may be exercised whether or not disciplinary proceedings have been started against the licensee or the employee.

When a licence has been suspended, the chief executive must give written notice of the suspension to the licensee, stating the grounds of the suspension. The licensee must return the licence to the chief executive within 14 days of receiving the suspension notice unless the licensee has a reasonable excuse.

Clause 75 provides that a licence is automatically cancelled when—

- a licensee is convicted of a serious offence;
- a licensee who is an individual is affected by bankruptcy action;
- a licensee that is a corporation has gone into liquidation.

On the happening of any of the defined events, the licensee is no longer licensed and must return the licence to the chief executive within 14 days of the event unless the licensee has a reasonable excuse.

PART 11—GENERAL PROVISIONS ABOUT LICENCES

Clause 76 provides for a licence to be issued in an approved form that contains the name of the licensee, the date the licence is issued, the expiry date of the licence and any other prescribed particulars. An approved form may be of a type suitable for office display or for personal identification. A personal identification licence must contain a recent photograph of the licensee. For licensed corporations, the chief executive may also issue a corporation form of licence that is endorsed with the categories of licence issued in the corporation's name.

Clause 77 requires a principal licensee to display the licensee's licence at the licensee's registered office in the way prescribed.

Clause 78 provides that a licence may be issued for a 1 year or a 3 year term.

Clause 79 provides that if a licence is lost, stolen, destroyed or damaged the licensee may apply for a replacement by using the approved form and paying the prescribed fee.

Clause 80 requires the chief executive to keep a register of licences and licence applications. Specified particulars contained in the register must be made publicly available. For applications, these are the name of an applicant; the place, if any, where an applicant intends to carry on business under a licence; the category of licence applied for; the date of the application; and the application number. For licences, the particulars are the name of a licensee; the licensee's registered office address; the category of a licensee's licence; the issue and expiry dates of a licence; the conditions imposed on a licence; the name of an individual in charge of a corporation licensee's business at the licensee's registered office; for a licensee director, the name of the corporation licensee; for an employed licensee, the name of the licensee's employer; licence numbers; and particulars about any surrender, suspension, cancellation or revocation of a licence.

A person may inspect, and obtain a copy of, the publicly available information contained in the register on payment of the prescribed fee. Provision is made for access to be made available by personal attendance at the department's head office or by using a computer link.

Clause 81 requires a licensee to give written notice to the chief executive of any prescribed change in the licensee's circumstances within 14 days after the change occurs.

CHAPTER 3—EMPLOYEE REGISTRATION

PART 1—CATEGORIES OF REGISTERED EMPLOYEES

Clause 82 sets out the categories of registered employees.

PART 2—HOW TO OBTAIN REGISTRATION

Clause 83 sets out the steps involved for an applicant in obtaining a registration. It also provides that the chief executive is to decide an application after having had regard, amongst other things, to the person's suitability and eligibility to obtain registration.

PART 3—APPLICATIONS FOR REGISTRATION

Clause 84 details the requirements for a registration application, including use of the approved form, provision of information required by the chief executive, payment of the relevant fees, and 2 recent colour photographs of the applicant.

PART 4—SUITABILITY OF APPLICANTS

Clause 85 states the persons who are not suitable to obtain registration and therefore, who can not be registered employees under the Act.

Clause 86 sets out the matters that the chief executive must consider when deciding a person's suitability to obtain registration. The person's character and previous licence or registration record are to be considered, including whether a claim has been paid out of the fund because of something the person did or omitted to do, and whether the person has ever been disqualified under the Act, the repealed Act or a corresponding law from being a licensee, an executive officer of a corporation or a holder of a certificate of registration. The chief executive must consider also the person's criminal history, solvency record, convictions (if any) for an offence under the Act, the repealed Act or another occupational licensing Act, capability of satisfactorily performing the activities of a registered employee in the category applied for and whether the person's name is entered in the register of disqualified company directors and other officers under the Corporations Law.

If the chief executive decides that an applicant is not a suitable person to obtain registration, the chief executive must give the applicant an information notice stating the decision, the reasons for the decision, and the rights of the applicant to apply for a review of the decision to the tribunal.

Clause 87 provides that, when the chief executive makes investigations about the suitability of an applicant, the chief executive may make an investigation about the applicant.

For the investigation, the chief executive may ask the commissioner of the police service for a written report about the criminal history of the applicant. The commissioner of the police service is required, when asked by the chief executive, to provide a criminal history in the commissioner's possession or to which the commissioner has access.

The term "criminal history" is defined in the dictionary to mean the convictions recorded against a person for offences, whether in Queensland or elsewhere in Australia.

Clause 88 prohibits an officer, employee or agent of the department from directly or indirectly disclosing a person's criminal history report or any information contained in the report.

The chief executive is required to destroy a criminal history report as soon as practicable after considering the person's suitability for registration as a registered employee.

Clause 89 gives power to the chief executive to require an applicant, by written notice, to give information or material about the applicant's suitability that the chief executive reasonably considers is needed to establish the applicant's suitability. The written notice must include a stated reasonable time within which the applicant must comply.

If an applicant fails to provide the information or material within the stated reasonable time, the applicant is taken to have withdrawn the application.

PART 5—ELIGIBILITY FOR REGISTRATION

Clause 90 provides that a person is eligible to obtain registration as a registered employee only if the person has the qualifications prescribed under a regulation for the category of registration applied for.

An applicant who has comparable qualifications or who, within the previous 2 years, has been the holder of a registration certificate under the Act for the category of registration being applied for, or who has held a comparable certificate under the repealed Act, may be accepted by the chief executive as having satisfied the educational or other qualifications requirements.

PART 6—ISSUE OF REGISTRATION CERTIFICATE

Clause 91 provides that the chief executive may issue or refuse to issue a registration certificate to an applicant.

A registration certificate may be issued to an applicant only if the chief executive is satisfied of the applicant's suitability and eligibility for a registration certificate. The chief executive must also be satisfied that the application was properly made.

If the chief executive refuses to issue a registration certificate to an applicant, within 14 days of the decision, the chief executive must give the applicant an information notice advising the applicant of the decision and reasons for the decision and the applicant's right to apply to the tribunal for a review of the decision.

A person who has been refused a registration certificate is not permitted to make another application for a registration certificate for 3 months after the date the chief executive gives the information notice. If the person applies to the tribunal for a review of the chief executive's decision and the tribunal confirms the chief executive's decision, the person may not make another application until 3 months after the date of the tribunal's decision.

Clause 92 gives power to the chief executive to issue a registration certificate on conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the certificate. A condition may limit or prohibit the performance of an activity authorised by the Act.

If the chief executive decides to issue a registration certificate subject to a condition, within 14 days of the decision, the chief executive must give the applicant an information notice advising the applicant of the decision and reasons for the decision and the applicant's right to apply to the tribunal for a review of the decision.

PART 7—ACTIVITIES AUTHORISED UNDER REGISTRATION CERTIFICATE

Clause 93 details the activities authorised for each of the categories of registration. For the holder of a registration certificate, the activities authorised are subject to any condition on the registration certificate issued to a holder and to the holder's employment authority given by the holder's employer.

PART 8—RENEWAL AND RESTORATION OF REGISTRATION CERTIFICATES

Division 1—Renewal

Clause 94 makes provision for renewal of a registration certificate by application before the certificate expires. The application must be made in the approved form, stating the term of the registration being applied for and the name and address of the licensee by whom the employee is employed. It must be accompanied by the application fee, the registration certificate renewal fee and 2 recent colour photographs of the prescribed size.

Clause 95 provides that the chief executive may renew or refuse to renew a registration certificate.

The chief executive may renew a registration certificate only if the chief executive is satisfied that—

- the registered employee is a suitable person;
- the application was properly made; and
- the employee meets the eligibility requirements for the certificate.

If the chief executive refuses to renew a registration certificate, within 14 days of the decision, the chief executive must give the applicant an information notice advising the applicant of the decision and reasons for the decision and the applicant's right to apply to the tribunal for a review of the decision.

Clause 96 provides that if an employee makes a renewal application under section 94, the employee's certificate is taken to continue in force from the day that it would have expired, until the employee's application is decided or until the application is withdrawn by the employee or is taken to have been withdrawn under section 89.

Division 2—Restoration

Clause 97 provides that if a registration certificate expires, an employee may apply to have the certificate restored.

The application must be made within 3 months of the expiry, in the approved form, stating the term of the registration being applied for and the name and address of the licensee by whom the employee is employed. It must be accompanied by the application fee, the registration renewal fee, the registration restoration fee and 2 recent colour photographs of the prescribed size.

Clause 98 provides that the chief executive may restore or refuse to restore a registration certificate.

The chief executive may restore a registration certificate only if the chief executive is satisfied that—

- the employee is a suitable person;
- the application was properly made; and
- the employee meets the eligibility requirements for the certificate.

If the chief executive refuses to restore a registration certificate, within 14 days of the decision, the chief executive must give the applicant an information notice advising the applicant of the decision and reasons for the decision and the applicant's right to apply to the tribunal for a review of the decision.

Clause 99 provides that if an employee makes a restoration application under section 97, the employee's certificate is taken to continue in force from the day that it would have expired, until the employee's application is decided or until the application is withdrawn by the employee or is taken to have been withdrawn under section 89.

PART 9—DEALINGS WITH REGISTRATION CERTIFICATES

Division 1—Transfer of registration certificate

Clause 100 states that a registration certificate may not be transferred.

Division 2—General

Clause 101 provides that the chief executive may amend the conditions of a registration certificate on the employee's application, or on the order of the tribunal after a disciplinary hearing, or on the chief executive's initiative.

An application by an employee for amendment of conditions must be made in the approved form and be accompanied by the prescribed fee. Before making the amendment applied for, the chief executive must be satisfied that the employee meets the eligibility requirements the chief executive specifies as relevant to the amendment.

Before the chief executive amends a condition on the chief executive's initiative, the chief executive is to be required to give written notice of the particulars of the proposed amendment to the employee and to advise the employee that the employee may make written submissions about the proposed amendment to the chief executive before a stated day, not later than 14 days after the notice is given. The chief executive must have regard to any submissions made by the employee before the stated day.

The requirement to give notice to the employee is not to apply if the amendment must be made urgently to avoid potential claims against the fund, or to ensure compliance with the Act.

If the chief executive decides to amend registration certificate conditions, the chief executive must give written notice of the amendment to the employee. An amendment takes effect on the day that written notice of the amendment is given to the employee or, if a later date is stated in the notice, the later date.

If the chief executive refuses to make an amendment requested by an employee, within 14 days of the decision, the chief executive must give the employee an information notice advising the employee of the decision and reasons for the decision and the employee's right to apply to the tribunal for a review of the decision.

Clause 102 provides for amendment of conditions on a registration certificate and return of a certificate that has been suspended or cancelled.

If the chief executive amends the conditions on a registration certificate and requests the employee to produce the certificate for amendment, the employee must produce the certificate for amendment within a stated period of not less than 14 days.

Clause 103 allows a registered employee to surrender the employee's registration certificate by giving written notice to the chief executive and returning the certificate. The certificate stops having effect on the day it is surrendered.

PART 10—IMMEDIATE SUSPENSION AND CANCELLATION OF REGISTRATION CERTIFICATES

Clause 104 permits the chief executive to immediately suspend a registration certificate for a period of not more than 28 days if —

- the chief executive considers on reasonable grounds that an irregularity or deficiency exists in a licensee's trust account; and
- a registered employee of the licensee may be responsible for the irregularity or deficiency.

The power may be exercised whether or not disciplinary proceedings have been started against the employee.

When a registration certificate has been suspended, the chief executive must give written notice of the suspension to the employee, stating the grounds of the suspension. The employee must return the registration certificate to the chief executive within 14 days of receiving the suspension notice unless the employee has a reasonable excuse.

Clause 105 provides that a registration certificate is automatically cancelled when—

- an employee is convicted of a serious offence; or
- an employee is affected by bankruptcy action.

On the happening of any of the defined events, the employee is no longer registered and must return the registration certificate to the chief executive within 14 days of the event unless the employee has a reasonable excuse.

PART 11—GENERAL PROVISIONS ABOUT EMPLOYEE REGISTRATION

Clause 106 provides for a registration certificate to be issued in an approved form which must contain the name of the employee, the date the certificate is issued, the expiry date of the certificate and any other prescribed particulars. An approved form may be of a type suitable for office display or for personal identification. A personal identification certificate must contain a recent photograph of the employee.

Clause 107 provides that a registration certificate may be issued for a 1 year or a 3 year term.

Clause 108 provides that if a registration certificate is lost, stolen, destroyed or damaged the employee may apply for a replacement by using the approved form and paying the prescribed fee.

Clause 109 requires the chief executive to keep a register of registration certificates and registration certificate applications. Specified particulars contained in the register must be made publicly available. For applications, these are the name of an applicant; the name and business address of the licensee by whom the applicant is to be employed; the category of registration certificate applied for; the date of the application; and the application number. For registration certificates, the particulars are the name of a registered employee; the name and business address of the licensee by whom the employee is employed; the category of an employee's registration certificate; the issue and expiry dates of a registration certificate; the conditions imposed on a registration certificate; registration certificate numbers; and particulars about any surrender, suspension, cancellation or revocation of a registration certificate.

A person may inspect, and obtain a copy of, the publicly available information contained in the register on payment of the prescribed fee. Provision is made for access to be made available by personal attendance at the department's head office or by using a computer link.

Clause 110 requires a registered employee to give written notice to the chief executive of any prescribed change in the employee's circumstances within 14 days after the change occurs.

CHAPTER 4—RESTRICTED LETTING AGENTS

PART 1—RESTRICTED LETTING AGENT'S LICENCE

Clause 111 states that a restricted letting agent's licence authorises the holder to let lots in a building complex and to collect rents for lots in a building complex as an agent for others for reward.

As a condition of a restricted letting agent's licence, the chief executive must limit the performance of the authorised activities by the licensee to 1 or more identified building complexes.

However, the chief executive has power to authorise a restricted letting agent to perform the activities in more than 1 building complex if—

- the relevant building complexes are on land contiguous to each other and the agent has the approval of each appropriate body corporate to carry on a restricted letting agent's business for the building complex; or
- immediately before the commencement of the Act, the agent held a restricted real estate agent's licence or corporation licence for all the building complexes under the repealed Act, and since the commencement has been authorised under a licence to perform the activities of a restricted letting agent for 1 or more of the building complexes.

PART 2—CONDUCT PROVISIONS***Division 1—Carrying on business***

Clause 112 provides that an individual who carries on the business of a restricted letting agent with others is not required to hold a restricted letting agent's licence or a real estate agent's licence if at least 1 of the persons with whom the individual carries on business does hold a licence as a restricted letting agent or a real estate agent, the individual does not perform the activities of a restricted letting agent and the individual meets the suitability requirements for holding a licence.

If a restricted letting agent is an individual, that person must reside permanently in the building complex for which the person is authorised by the licence to perform the restricted letting agent activities, or if the person is authorised to perform the activities for more than 1 building complex, the person must reside in 1 of the building complexes. However, if the individual's restricted letting agent's licence is deactivated, this requirement does not apply.

If a restricted letting agent is a corporation, the corporation must ensure that an individual who performs the activities of a restricted letting agent for the corporation resides permanently in the building complex for which the corporation is authorised by the licence to perform the restricted letting agent activities, or if the corporation is authorised to perform the activities for more than 1 building complex, the individual resides in 1 of the building complexes. However, if the corporation's restricted letting agent's licence is deactivated, this requirement does not apply.

Clause 113 requires a restricted letting agent who is an individual and a principal licensee to be in charge of the agent's business at the agent's registered office.

If the restricted letting agent is a corporation, the corporation must ensure that the individual in charge of the corporation's business at the corporation's registered office is a restricted letting agent or a real estate agent.

If a restricted letting agent who is an individual and a principal licensee is authorised to carry on business in more than 1 building complex, and has a place of business in each building complex, the agent must ensure that an individual who is a restricted letting agent or a real estate agent is in charge of the agent's business at the other place.

Division 2—Appointment

Clause 114 provides that a restricted letting agent must not act for a client in performing an activity authorised by the licence unless the client has first appointed the agent in writing.

The written appointment (for a single particular service or a continuing appointment) is required to state—

- the service to be performed and how it is to be performed;
- in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to any amount that may be prescribed, and for a single appointment, if commission is payable and expressed as a percentage of rent, the amount of commission expressed in dollars based on the listed rental charge;
- the fees and charges payable for the service;
- the expenses, including advertising and marketing expenses, the agent is authorised by the client to incur;
- the source and estimated amount of any rebate, discount or commission the agent may receive in relation to any expenses the agent may incur in connection with the performance of the service;
- any condition, limitation or restriction on the performance of the service;
- when the fees and charges become payable; and
- if a service to be performed is the letting of lots or the collecting of rent and commission is payable and expressed as a percentage, that the commission is worked out only on the actual amount of rent collected.

If the appointment is a continuing appointment, it must state the date the appointment ends, and that the appointment may be revoked on the giving of 90 days written notice, or some lesser period (not less than 30 days) agreed by the parties. The notice must be signed and given to the other party.

The restricted letting agent must give a copy of the appointment, signed by the agent and client, to the client.

Clause 115 requires an appointment to be in the approved form and to contain a prominent statement that the client should seek independent legal advice before signing the appointment. An appointment that does not comply is ineffective.

Division 3—Recovery of reward or expense

Clause 116 provides that if a restricted letting agent performs a service of letting lots or collecting rents for the payment of a commission, the agent must not claim commission worked out on an amount more than the actual amount collected.

Clause 117 provides that a person is not entitled to sue for, recover or retain a reward for performing an activity of a restricted letting agent unless, at the time the activity was performed, the person held a restricted letting agent's licence, was authorised under the licence to perform the activity and had been properly appointed in writing.

The amount that a restricted letting agent, who was licensed, authorised and properly appointed, is entitled to sue for, recover or retain as a reward or expense must be an amount no more than the amount stated in the appointment.

If the amount of reward or expenses that may be charged or incurred is limited by regulation, the agent is not entitled to sue for, recover or retain a greater amount.

Clause 118 provides that if a person is convicted of an offence under section 116 and the court is satisfied on the balance of probabilities that the person recovered or retained an amount to which the person was not entitled, the court must order the person to pay the amount to the client, whether or not any penalty has been imposed for the offence.

The order of the court may be filed by the client in a court having jurisdiction for the recovery of a debt of equal amount and enforced as a judgment of that court.

Division 4—Code of conduct

Clause 119 permits a regulation to be made prescribing a code of conduct about restricted letting agent practice, including setting conduct standards, establishing principles for fair trading and providing for a system of complaint resolution.

Clause 120 entitles a person aggrieved by the conduct of a restricted letting agent to make a written complaint to the chief executive about the conduct. The chief executive is given power to investigate the complaint, and if satisfied that the code of conduct has been breached, to take action against the agent, including starting a disciplinary proceeding. The power may be exercised even if the person whose conduct is the subject of the complaint is no longer licensed as a restricted letting agent.

PART 3—GENERAL

Clause 121 defines the registered office of a restricted letting agent who is a principal licensee as the place specified by the agent as the agent's principal place of business in the agent's licence application, or another place notified to the chief executive in the approved form. For an employed licensee, the registered office is the place specified by the employee in the employee's licence application, as the employee's business address, or another place notified to the chief executive in the approved form.

Clause 122 requires a restricted letting agent who is a principal licensee to notify the chief executive in the approved form, within 14 days, of any change in the agent's registered office, the closing of any place where the agent carries on business and the opening of any new place of business. A principal licensee must also notify the chief executive in the approved form, within 14 days, of any change in, or revocation of, a body corporate's approval for the agent to carry on the business of a letting agent.

An employed licensee must notify the chief executive in the approved form, within 14 days, of any change in the employed agent's registered office.

Clause 123 requires a restricted letting agent who is a principal licensee to display the agent's name and any prescribed particulars at each place the agent carries on business. If the agent is not the person in charge of the agent's business at a place, the agent must also display the name of the restricted letting agent who is in charge of the agent's business at that place. If the agent publishes an advertisement about the agent's business in a newspaper, or elsewhere, the advertisement is required to include all the particulars that are prescribed under a regulation.

Clause 124 requires a restricted letting agent who is a principal licensee to keep an employment register at the agent's registered office. The agent must enter in the register the name and other prescribed particulars of every employed licensee employed by the agent. A regulation may prescribe the form of the register.

PART 4—OFFENCES

Clause 125 prohibits a person from acting as a restricted letting agent unless the person has a restricted letting agent's licence and the licence authorises the performance of the particular activity.

If a lawyer, in the course of the lawyer's practice, collects rents for lots in a building complex, the lawyer is not taken to have acted as a restricted letting agent if the lawyer complies with the requirements of the *Trust Accounts Act 1973*.

Clause 126 prohibits a restricted letting agent from accepting an appointment to act for more than 1 party to a transaction. If an agent fails to comply, the appointments are taken to be ineffective from the time they were made.

Clause 127 requires a restricted letting agent, if asked by a person with whom the agent is dealing, to produce the agent's licence for the person's inspection.

CHAPTER 5—REAL ESTATE AGENTS

PART 1—REAL ESTATE AGENT’S AUTHORISATION AND RESPONSIBILITY

Division 1—Real estate agent’s licence

Clause 128 provides that a real estate agent’s licence authorises the holder to perform the following activities as an agent for others for reward—

- to buy, sell, exchange or let places of residence or land, or interests in places of residence or land;
- to buy, sell, exchange or let businesses or interests in businesses;
- to collect rents;
- to buy, sell, exchange livestock or an interest in livestock;
- to negotiate for the buying, selling, exchanging or letting of places of residence or land, or interests in places of residence or land, or businesses or interests in businesses;
- to negotiate for the buying, selling, exchanging of livestock or an interest in livestock.

A licence authorises the holder to perform the activities in carrying on a business alone or with others, or as an employee of someone.

Division 2—Responsibilities of persons in charge of a licensee’s business for salespersons

Clause 129 requires a real estate agent who is a principal licensee to take reasonable steps to ensure that each real estate salesperson employed by the agent is properly supervised, acts only within the scope of the employee’s employment authority and otherwise complies with the Act. An employed real estate agent who is in charge of a principal licensee’s business at a place of business must take reasonable steps to ensure that each real estate

salesperson employed at that place is properly supervised, acts only within the scope of the employee's employment authority and otherwise complies with the Act.

A real estate agent who fails to comply with the section is liable to disciplinary action.

Clause 130 provides that when a real estate agent employs a salesperson, the agent must immediately give the salesperson an employment authority that clearly specifies the activities the salesperson is authorised by the agent to perform on the agent's behalf.

PART 2—CONDUCT PROVISIONS

Division 1—Carrying on business

Clause 131 provides that an individual who carries on the business of a real estate agent with others is not required to hold a real estate agent's licence if at least 1 of the persons with whom the individual carries on business does hold a licence as a real estate agent, the individual does not perform the activities of a real estate agent and the individual meets the suitability requirements for holding a licence.

Clause 132 requires a real estate agent who is an individual and a principal licensee to be in charge of the agent's business at the agent's registered office. If the agent has more than 1 place of business, the agent must ensure that a real estate agent who is an individual is in charge of each other place of business.

If the real estate agent is a corporation, the corporation must ensure that the individual in charge of the corporation's business at the corporation's registered office is a real estate agent. If the corporation has more than 1 place of business, the corporation must ensure that a real estate agent who is an individual is in charge of each other place of business.

In all cases, an individual is not permitted to be in charge of a real estate agent's business at more than 1 place.

Division 2—Appointment

Clause 133 provides that a real estate agent must not act for a client in performing an activity authorised by the licence unless the client has first appointed the agent in writing. However, this requirement does not apply if the service to be performed is the sale of livestock.

The written appointment (for a single particular service or a continuing appointment) is required to state—

- the service to be performed and how it is to be performed;
- in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to the prescribed amount;
- the fees, charges and commission payable for the service;
- the expenses, including advertising and marketing expenses, the agent is authorised by the client to incur;
- the source and estimated amount of any rebate, discount, commission or benefit the agent may receive in relation to any expenses the agent may incur in connection with the performance of the service;
- any condition, limitation or restriction on the performance of the service;
- when the fees, charges and commission become payable;
- if a service to be performed is the sale or letting of property or the collecting of rents, and commission is payable for the service and it is expressed as a percentage of an estimated sale price or amount to be collected, that the commission is worked out only on the actual sale price or the amount actually collected;
- if the appointment is for a sole or exclusive agency, the date the appointment ends.

If the appointment is a continuing appointment, it must state the date the appointment ends, and that the appointment may be revoked on the giving of 90 days written notice, or some lesser period (not less than 30 days) agreed by the parties. The notice must be signed and given to the other party.

If the appointment authorises an auction sale, a separate auctioneer appointment under section 210 is not required.

The real estate agent must give a copy the appointment, signed by the agent and client, to the client.

Clause 134 requires an appointment to be in the approved form and to contain a prominent statement that the client should seek independent legal advice before signing the appointment. If the appointment does not comply, it is ineffective from the time it is made.

Clause 135 provides that, if the appointment is for a sole or exclusive agency, the real estate agent must give the client a notice in the approved form, before the appointment is signed, stating—

- the proposed term of the appointment;
- the term is negotiable up to a maximum term of 60 days;
- whether the appointment is for a sole agency or an exclusive agency;
- the difference between sole agency and exclusive agency;
- the consequences for the client if the property is sold by someone other than the appointed agent during the term of the sole or exclusive agency.

The appointment is permitted to include a provision that, at the end of the term of the sole or exclusive agency, the appointment continues under an open listing that may be terminated at any time by either party.

Clause 136 permits an agent to be reappointed for a sole or exclusive agency for 1 or more further terms of not more than 60 days each. A reappointment must not be made earlier than 14 days before the preceding appointment is to end.

Clause 137 provides that if the notice about a sole or exclusive agency is not given to a client, or if the term of appointment is more than 60 days, the agent's appointment is ineffective. If a reappointment is made earlier than 14 days before the preceding appointment is made, the reappointment is ineffective.

Division 3—Disclosure of interest

Clause 138 requires a real estate agent or a person acting for the agent in the sale of residential property, to disclose to a prospective buyer of the property—

- any relationship, and the nature of the relationship, the agent has with anyone to whom the agent refers the buyer for professional services associated with the sale; and
- whether the agent derives or expects to derive any consideration from a person to whom the agent refers the buyer, and, if so, the amount or value of the consideration.

Disclosure is effective only if it is made to and acknowledged by the buyer in the approved form before a contract for the sale of the property is entered into.

Division 4—Recovery of reward or expense

Clause 139 applies to a real estate agent who performs a service of selling or letting property or collecting rents. The agent must not claim commission worked out on an amount that is more than the actual sale price of the property or the amount collected.

Clause 140 provides that a person is not entitled to sue for, recover or retain a reward or expense for performing an activity as a real estate agent unless, at the time the activity was performed, the person held a real estate agent's licence, was authorised under the licence to perform the activity and had been properly appointed in writing.

Clause 141 provides that a person is not entitled to sue for, recover or retain a reward for the performance of an activity as a real estate agent that is more than the amount of reward stated in the agent's appointment..

If the amount of reward is limited by regulation, the person is not entitled to sue for, recover or retain a reward greater than the amount allowed.

A person is not entitled to sue for, recover or retain expenses for the performance of an activity as a real estate agent that are more than the amount of expenses stated in the agent's appointment and actually expended.

If the amount of expenses is limited by regulation, the person is not entitled to sue for, recover or retain expenses greater than the amount allowed.

Clause 142 provides that if a person is convicted of an offence under section 139 and the court is satisfied on the balance of probabilities that the person recovered or retained an amount to which the person was not entitled, the court must order the person to pay the amount to the client, whether or not any penalty has been imposed for the offence.

The order of the court may be filed by the client in a court having jurisdiction for the recovery of a debt of equal amount and enforced as a judgment of that court.

Division 5—Interests in property

Clause 143 provides that for this division, the term “obtain” includes being in any way concerned in obtaining.

Clause 144 provides that, if a real estate agent obtains an option to purchase property in which the agent has a beneficial interest, from a client who has placed the property with the agent for sale, the agent has committed an offence. If a real estate salesperson obtains an option to purchase property in which the salesperson has a beneficial interest, from a client who has placed the property with the salesperson's agent employer for sale, the salesperson has committed an offence.

It is an offence for a real estate agent to sell property in which the agent has a beneficial interest in an option to purchase the property.

Clause 145 provides that if a real estate agent obtains a beneficial interest in property that a client has placed with the agent for sale, the agent has committed an offence. If a real estate salesperson obtains a beneficial interest in property that has been placed with the salesperson's agent employer by a client of the agent, the salesperson has committed an offence.

A real estate agent or a real estate salesperson will not commit an offence if, before a contract for the sale is entered into, the agent or salesperson obtains the client's written acknowledgment in the approved form, that the client is aware that the agent or salesperson is interested in obtaining a beneficial interest in the property and consents to the interest being obtained. The agent or salesperson is required to act fairly and honestly in relation to the sale, and is not permitted to receive commission or other reward from the client for the sale. When the sale is made, the client must be in substantially as good a position as if the property had been sold at fair market value.

Clause 146 provides that section 145 does not apply to livestock sales if the real estate agent obtains a client's written acknowledgment that the client is aware that the agent or salesperson is interested in obtaining a beneficial interest in the client's livestock, and the client consents to the interest being obtained.

Division 6—Lands not lawfully useable for residential purposes

Clause 147 states that, for this division, the term "vacant land" means land on which there are no structural improvements other than fencing.

Clause 148 provides that the division applies to a sale or proposed sale of vacant land if the sale is by a real estate agent, as an agent for another person or as the principal, of land—

- within the City of Brisbane area or a local government area or joint local government area under the *Local Government Act 1993*;
- that cannot, as at the day of sale, be lawfully used for residential purposes.

Clause 149 requires an agent selling such land to give a proposed buyer a written statement, before the buyer signs a contract for the sale, containing the following particulars—

- identification of the land;
- the names and addresses of the seller and the proposed buyer;
- a clear statement that the land cannot lawfully be used for residential purposes;

- a clear statement that if the buyer erects a place of residence on the land or otherwise uses it for residential purposes unlawfully, the buyer may commit an offence and a named local government may be empowered to demolish the place of residence or other residential structure; and
- the date of the statement.

The statement must be signed by the agent and the proposed buyer. The agent must keep a copy of the statement at the agent's registered office and make it available for inspection when an inspector asks to see it.

Clause 150 provides that a buyer may avoid a contract for the sale of the land by giving a written notice to the seller or the agent if the buyer was not given the notice or if the notice the buyer was given was defective in a material way. The notice must be given within 6 months of the day the buyer entered into the contract to buy the land.

If the contract is avoided by the buyer, the seller and the agent are jointly and severally liable to the buyer for all amounts paid by the buyer under the contract, and for the buyer's legal and other expenses in relation to the contract after the contract was signed. An agent who is liable to the buyer for an amount paid under the contract must repay it within 14 days after the contract is avoided.

If the buyer avoids the contract after the contract is completed, the buyer must, after all amounts recoverable by the buyer have been paid, sign any documents necessary to convey title to the land to the person entitled to it, and deliver to that person any instrument of title the buyer has. The buyer is not liable for any costs associated with the conveyance and may recover the reasonable costs of the conveyance as a debt from the seller and the agent. The seller and the agent are jointly and severally liable to repay the conveyance costs to the buyer.

Clause 151 provides that the liability of an agent to punishment for a breach of section 149 or 150 is additional to other legal liabilities imposed under section 150.

Division 7—Sales of particular businesses

Clause 152 provides that the division applies to the sale of a restricted letting agent's business.

Clause 153 requires a real estate agent, who is authorised by a seller to sell a restricted letting agent's business, to give a proposed buyer of the business a written statement before the buyer signs a contract in relation to the sale. The statement must contain the following particulars—

- identification of the business;
- the names and addresses of the seller and the proposed buyer;
- a clear statement that, to carry on the business, the buyer must have the approval of the body corporate of the building complex in which the activities of a restricted letting agent are to be performed;
- a clear statement that a person who performs the activities of a restricted letting agent must hold a restricted letting agent's licence or be otherwise authorised under the Act to perform the activities;
- the date of the statement.

The statement must be signed by the agent and the proposed buyer. The agent must keep a copy of the statement at the agent's registered office and make it available for inspection when an inspector asks to see it.

Division 8—Code of conduct

Clause 154 permits a regulation to be made prescribing a code of conduct about real estate agency practice, including setting conduct standards for real estate agents, employed licensees and real estate salespersons, establishing principles for fair trading and providing for a system of complaint resolution.

Clause 155 entitles a person aggrieved by the conduct of a real estate agent or a real estate salesperson to make a written complaint to the chief executive about the conduct. The chief executive is given power to investigate the complaint, and if satisfied that the code of conduct has been breached, to take action against the agent or salesperson, including starting a disciplinary proceeding. The power may be exercised even if the person whose conduct is the subject of the complaint is no longer licensed as a real estate agent or the holder of a salesperson's registration certificate.

PART 3—GENERAL

Clause 156 defines the registered office of a real estate agent who is a principal licensee as the place specified by the agent as the agent's principal place of business in the agent's licence application, or another place notified to the chief executive in the approved form. For an employed licensee, the registered office is the place specified by the employee in the employee's licence application, as the employee's business address, or another place notified to the chief executive in the approved form.

Clause 157 requires a real estate agent who is a principal licensee to notify the chief executive in the approved form, within 14 days, of any change in the agent's registered office, the closing of any place where the agent carries on business and the opening of any new place of business.

An employed licensee must notify the chief executive in the approved form, within 14 days, of any change in the employed agent's registered office.

Clause 158 requires a real estate agent who is a principal licensee to display the agent's name and any prescribed particulars at each place the agent carries on business. If the agent is not the person in charge of the agent's business at a place, the agent must also display the name of the real estate agent who is in charge of the agent's business at that place. If the agent publishes an advertisement about the agent's business in a newspaper, or elsewhere, the advertisement is required to include all the particulars that are prescribed under a regulation.

Clause 159 requires a real estate agent who is a principal licensee to keep an employment register at the agent's registered office. The agent must enter in the register the name and other prescribed particulars of every person who is employed as an employed licensee or registered employee by the agent. The agent must also enter, for each real estate salesperson or trainee auctioneer, the activities the salesperson is authorised to perform for the agent or the trainee is authorised to perform under the supervision of an auctioneer.

The particulars of each employee and the activities each salesperson or trainee auctioneer is authorised to perform must be entered immediately the employee is employed and any change that happens during the employment must be immediately entered. A regulation may prescribe the form of the register.

PART 4—OFFENCES

Clause 160 prohibits a person from acting as an agent for someone else for reward in performing an activity that may be done only under the authority of a real estate agent's licence unless the person holds a licence and the performance of the activity is authorised under the licence or unless the person is otherwise permitted under this Act or another Act to perform the activity.

A person must not act as a real estate agent unless the person holds a licence and is authorised under the licence to act or unless the person is otherwise permitted under this Act or another Act to act. A person "acts" as a real estate agent if the person performs any activity that a real estate agent's licence authorises, or advertises, notifies or states that the person performs or is willing to perform any of those activities, or holds out as being ready to perform any of those activities.

A person will not be taken to act as a real estate agent merely because the person collects rents for the agent as the agent's employee.

If a lawyer, in the course of the lawyer's practice, collects rents, the lawyer is not taken to have acted as a real estate agent if the lawyer complies with the requirements of the *Trust Accounts Act 1973*.

Clause 161 prohibits a person from holding out that the person is a real estate salesperson if the person does not hold a registration certificate as a real estate salesperson.

A person will not be taken to act as a real estate salesperson merely because the person collects rents for a real estate agent as the real estate agent's employee.

Clause 162 prohibits a real estate agent from accepting an appointment, other than for a livestock sale, to act for more than 1 party to a transaction. If an agent fails to comply, the appointments are taken to be ineffective from the time they were made.

Clause 163 requires a real estate agent, if asked by a person with whom the agent is dealing, to produce the agent's licence for the person's inspection.

Clause 164 prohibits a real estate agent from employing, as a real estate salesperson, a person the agent knows, or ought to know, does not hold a registration certificate as a real estate salesperson.

A principal licensee who is an individual is not permitted to employ as a real estate salesperson, himself or herself, or another individual with whom the principal licensee carries on business as a real estate agent.

A principal licensee that is a corporation is not permitted to employ as a real estate salesperson an executive officer of the corporation.

CHAPTER 6—PASTORAL HOUSES

PART 1—PASTORAL HOUSE'S AUTHORISATIONS AND RESPONSIBILITIES

Division 1—Pastoral house licences

Clause 165 provides that a pastoral house licence authorises a pastoral house to perform the following activities as an agent for others for reward—

- the activities of a real estate agent restricted to the sale of rural land and livestock;
- the activities of an auctioneer restricted to—
 - rural land, livestock and wool;
 - not more than 4 auctions each year, for each place of business of a pastoral house, of land that is not rural land; and
 - plant, machinery, furniture and other items situated on rural land.

A pastoral house licence authorises the pastoral house to perform the activities in carrying on a business alone or with another pastoral house, real estate agent or auctioneer. However, if a pastoral house carries on business with a real estate agent or an auctioneer, the pastoral house must comply with the trust account requirements of Chapter 12 of the Act in relation to transactions entered into for the business.

Clause 166 provides that a pastoral house director's licence authorises the holder to perform the activities of a real estate agent restricted to the sale of rural land and livestock for the named pastoral house of which the holder is a director.

Clause 167 provides that a pastoral house manager's licence authorises the holder to manage a named pastoral house's business at a place other than the pastoral house's registered office and to perform the activities of a real estate agent restricted to the sale of rural land and livestock for the pastoral house of which the holder is a manager.

Clause 168 provides that a pastoral house auctioneer's licence authorises the holder to perform the activities of an auctioneer for a named pastoral house.

Division 2—Responsibility of persons in charge of a licensee's business for salespersons

Clause 169 requires a pastoral house to take reasonable steps to ensure that each pastoral house salesperson employed by the pastoral house is properly supervised, acts only within the scope of the salesperson's employment authority and otherwise complies with the Act.

A pastoral house manager who is in charge of a pastoral house's business at a place of business must take reasonable steps to ensure that each pastoral house salesperson employed at that place is properly supervised, acts only within the scope of the salesperson's employment authority and otherwise complies with the Act.

A pastoral house or pastoral house manager who fails to comply with the section is liable to disciplinary action.

Clause 170 provides that when a pastoral house employs a salesperson, the pastoral house must immediately give the salesperson an employment authority that clearly specifies the activities the salesperson is authorised by the pastoral house to perform on the pastoral house's behalf.

PART 2—CONDUCT PROVISIONS***Division 1—Carrying on business***

Clause 171 prohibits a pastoral house from carrying on the business of a pastoral house with another person unless the person is another pastoral house or a real estate agent or an auctioneer.

Clause 172 requires a pastoral house to ensure that the individual who is in charge of its business at its registered office is a pastoral house director. If the pastoral house has more than 1 place of business, an individual who is a pastoral house director or a pastoral house manager or a real estate agent must be in charge of the business at each place. However, an individual is not permitted to be in charge of a pastoral house's business at more than 1 place of business.

Division 2—Appointment

Clause 173 provides that a pastoral house must not act for a client in performing an activity authorised by the licence unless the client has first appointed the pastoral house in writing. However, this requirement does not apply if the service to be performed is the sale of livestock.

The written appointment (for a single particular service or a continuing appointment) is required to state—

- the service to be performed and how it is to be performed;
- in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to the prescribed amount;
- the fees, charges and commission payable for the service;
- the expenses, including advertising and travelling expenses, the pastoral house is authorised by the client to incur;
- the source and estimated amount of any rebate, discount, commission or benefit the pastoral house may receive in relation to any expenses the pastoral house is authorised to incur in connection with the performance of the service;

- any condition, limitation or restriction on the performance of the service;
- when the fees, charges and commission become payable;
- if the service to be performed is the sale of property, and commission is payable and expressed as a percentage, that the commission is worked out only on the actual sale price of the property; and
- if the appointment is for a sole or exclusive agency, the date the appointment ends.

If the appointment is a continuing appointment, it must state the date the appointment ends, and that the appointment may be revoked on the giving of 90 days written notice, or some lesser period (not less than 30 days) agreed by the parties. The notice must be signed and given to the other party.

If the appointment authorises an auction sale, a separate auctioneer appointment under section 210 is not required.

The pastoral house must give a copy the appointment, signed by the pastoral house and client, to the client.

Clause 174 requires an appointment to be in the approved form and to contain a prominent statement that the client should seek independent legal advice before signing the appointment. If the appointment does not comply, it is ineffective from the time it is made.

Clause 175 provides that, if the appointment is for a sole or exclusive agency, the pastoral house must give the client a notice in the approved form, before the appointment is signed, stating—

- the proposed term of the appointment;
- the term is negotiable up to a maximum term of 60 days;
- whether the appointment is for a sole agency or an exclusive agency;
- the difference between sole agency and exclusive agency;
- the consequences for the client if the property is sold by someone other than the pastoral house during the term of the sole or exclusive agency.

The appointment is permitted to include a provision that, at the end of the term of the sole or exclusive agency, the appointment continues under an open listing that may be terminated at any time by either party.

Clause 176 permits a pastoral house to be reappointed for a sole or exclusive agency for 1 or more further terms of not more than 60 days each. A reappointment must not be made earlier than 14 days before the preceding appointment is to end.

Clause 177 provides that if the notice about a sole or exclusive agency is not given to a client, or if the term of appointment is more than 60 days, the pastoral house's appointment is ineffective. If a reappointment is made earlier than 14 days before the preceding appointment is made, the reappointment is ineffective.

Division 3—Recovery of commission or reward

Clause 178 applies to a service of selling property performed by a pastoral house for the payment of a commission. The pastoral house must not claim commission worked out on an amount more than the actual sale price of the property.

Clause 179 provides that a person is not entitled to sue for, recover or retain a reward or expense for performing an activity as a pastoral house unless, at the time the activity was performed, the person held a pastoral house licence, was authorised under the licence to perform the activity and had been properly appointed in writing.

Clause 180 provides that a pastoral house is not entitled to sue for, recover or retain a reward for the performance of an activity as a pastoral house that is more than the amount of reward stated in the pastoral house's appointment.

A pastoral house is not entitled to sue for, recover or retain expenses for the performance of an activity as a pastoral house that are more than the lesser of the amount of expenses stated in the agent's appointment and actually expended.

If the amount of reward or expenses is limited by regulation, the pastoral house is not entitled to sue for, recover or retain a greater amount.

Clause 181 provides that if a person is convicted of an offence under section 178 and the court is satisfied on the balance of probabilities that the person recovered or retained an amount to which the person was not entitled, the court must order the person to pay the amount to the client, whether or not any penalty has been imposed for the offence.

The order of the court may be filed by the client in a court having jurisdiction for the recovery of a debt of equal amount and enforced as a judgment of that court.

Division 4—Interests in property

Clause 182 provides that for this division, the term “obtain” includes being in any way concerned in obtaining.

Clause 183 provides that, if a pastoral house obtains an option to purchase property in which the pastoral house has a beneficial interest, from a client who has placed the property with the pastoral house for sale, the pastoral house has committed an offence. If a pastoral house officer obtains an option to purchase property in which the pastoral house officer has a beneficial interest, from a client who has placed the property with the pastoral house for sale, the pastoral house officer has committed an offence.

It is an offence for a pastoral house to sell property in which the pastoral house has a beneficial interest in an option to purchase the property.

Clause 184 provides that if a pastoral house obtains a beneficial interest in property which a client has placed with the pastoral house for sale, the pastoral house has committed an offence. If a pastoral house officer obtains a beneficial interest in property which has been placed with the pastoral house by a client of the pastoral house, the pastoral house officer has committed an offence.

A pastoral house or a pastoral house officer will not commit an offence if, before a contract for the sale is entered into, the pastoral house or pastoral house officer obtains the client’s written acknowledgment in the approved form, that the client is aware that the pastoral house or pastoral house officer is interested in obtaining a beneficial interest in the property and consents to the interest being obtained. The pastoral house or pastoral house officer is required to act fairly and honestly in relation to the sale, and is not permitted to receive commission or other reward from the client for the sale. When

the sale is made, the client must be in substantially as good a position as if the property had been sold at fair market value.

Clause 185 provides that section 184 does not apply to livestock sales if the pastoral house obtains a client's written acknowledgment that the client is aware that the pastoral house or pastoral house officer is interested in obtaining a beneficial interest in the client's livestock, and the client consents to the interest being obtained.

Division 5—Lands not lawfully useable for residential purposes

Clause 186 states that, for this division, the term "vacant land" means land on which there are no structural improvements other than fencing.

Clause 187 provides that the division applies to a sale or proposed sale of vacant land if the sale is by a pastoral house, as an agent for another person or as the principal, of land—

- within the City of Brisbane area or a local government area or joint local government area under the *Local Government Act 1993*;
- that cannot, as at the day of sale, be lawfully used for residential purposes.

Clause 188 requires a pastoral house selling such land to give a proposed buyer a written statement, before the buyer signs a contract for the sale, containing the following particulars—

- identification of the land;
- the names and addresses of the seller and the proposed buyer;
- a clear statement that the land cannot lawfully be used for residential purposes;
- a clear statement that if the buyer erects a place of residence on the land or otherwise uses it for residential purposes unlawfully, the buyer may commit an offence and a named local government may be empowered to demolish the place of residence or other residential structure; and
- the date of the statement

The statement must be signed by the pastoral house and the proposed buyer. The pastoral house must keep a copy of the statement at the pastoral house's registered office and make it available for inspection when an inspector asks to see it.

Clause 189 provides that a buyer may avoid a contract for the sale of the land by giving a written notice to the seller or the pastoral house if the buyer was not given the notice or if the notice the buyer was given was defective in a material way. The notice must be given within 6 months of the day the buyer entered into the contract to buy the land.

If the contract is avoided by the buyer, the seller and the pastoral house are jointly and severally liable to the buyer for all amounts paid by the buyer under the contract, and for the buyer's legal and other expenses in relation to the contract after the contract was signed. A pastoral house that is liable to the buyer for an amount paid under the contract must repay it within 14 days after the contract is avoided.

If the buyer avoids the contract after the contract is completed, the buyer must, after all amounts recoverable by the buyer have been paid, sign any documents necessary to convey title to the land to the person entitled to it, and deliver to that person any instrument of title the buyer has. The buyer is not liable for any costs associated with the conveyance and may recover the reasonable costs of the conveyance as a debt from the seller and the agent. The seller and the agent are jointly and severally liable to repay the conveyance costs to the buyer.

Clause 190 provides that the liability of a pastoral house to punishment for a breach of section 188 or 189 is additional to other legal liabilities imposed under section 189.

Division 6—Code of conduct

Clause 191 permits a regulation to be made prescribing a code of conduct for pastoral houses, including setting conduct standards for pastoral houses, employed licensees and pastoral house officers, establishing principles for fair trading and providing for a system of complaint resolution.

Clause 192 entitles a person aggrieved by the conduct of a pastoral house or pastoral house officer to make a written complaint to the chief executive about the conduct. The chief executive is given power to investigate the

complaint, and if satisfied that the code of conduct has been breached, to take action against the pastoral house or pastoral house officer, including starting a disciplinary proceeding. The power may be exercised even if the person whose conduct is the subject of the complaint is no longer a pastoral house or pastoral house officer.

PART 3—GENERAL

Clause 193 defines the registered office of a pastoral house as the place specified by the pastoral house as its principal place of business in its licence application, or another place notified to the chief executive in the approved form. For a pastoral house director, manager or auctioneer, the registered office is the place specified by them in their licence applications, as the business address, or another place notified to the chief executive in the approved form.

Clause 194 requires a pastoral house to notify the chief executive in the approved form, within 14 days, of any change in the pastoral house's registered office, the closing of any place where the pastoral house carries on business and the opening of any new place of business.

A pastoral house director, manager or auctioneer must notify the chief executive in the approved form, within 14 days, of any change in their registered office.

A pastoral house is required to notify the chief executive in the approved form within 14 days if a person who is a pastoral house director ceases to be a director. If a person who is a pastoral house manager or auctioneer ceases to be an employee of the pastoral house, the pastoral house must notify the chief executive in the approved form, within 14 days.

Clause 195 requires a pastoral house to display, at each place it carries on business, its name, the name of the individual in charge of its business there and any prescribed particulars. If the pastoral house publishes an advertisement about its business in a newspaper, or elsewhere, the advertisement is required to include all the particulars that are prescribed under a regulation.

Clause 196 requires a pastoral house to keep an employment register at the its registered office. The pastoral house must enter in the register the name and other prescribed particulars of every person who is employed as

an employed licensee or pastoral house salesperson. The pastoral house must also enter, for each pastoral house salesperson, the activities the salesperson is authorised by it to perform.

The particulars and authorised activities must be entered immediately the employee is employed and any change that happens during the employment must be immediately entered. A regulation may prescribe the form of the register.

PART 4—OFFENCES

Clause 197 prohibits a person from acting as an agent for someone else for reward in performing an activity that may be done only under the authority of a pastoral house licence unless the person holds a licence and the performance of the activity is authorised under the licence or unless the person is otherwise permitted under this Act or another Act to perform the activity.

A person must not act as a pastoral house unless the person holds a licence and is authorised under the licence to act or unless the person is otherwise permitted under this Act or another Act to act. A person “acts” as a pastoral house if the person performs any activity that a pastoral house licence authorises, or advertises, notifies or states that the person performs or is willing to perform any of those activities, or holds out as being ready to perform any of those activities.

Clause 198 prohibits a person from acting as an agent for someone else for reward in performing an activity that may be done only under the authority of a pastoral house director’s licence unless the person holds a licence and the performance of the activity is authorised under the licence or unless the person is otherwise permitted under this Act or another Act to perform the activity.

Clause 199 prohibits a person from acting as an agent for someone else for reward in performing an activity that may be done only under the authority of a pastoral house manager’s licence unless the person holds a licence and the performance of the activity is authorised under the licence or unless the person is otherwise permitted under this Act or another Act to perform the activity.

Clause 200 prohibits a person from acting as an agent for someone else for reward in performing an activity that may be done only under the authority of a pastoral house auctioneer's licence unless the person holds a licence and the performance of the activity is authorised under the licence or unless the person is otherwise permitted under this Act or another Act to perform the activity.

Clause 201 prohibits a person from holding out that the person is a pastoral house salesperson if the person does not hold a registration certificate as a pastoral house salesperson.

Clause 202 prohibits a pastoral house from accepting an appointment to act for more than 1 party to a transaction. If a pastoral house fails to comply, the appointments are taken to be ineffective from the time they were made. However, this section does not apply if the transaction involves a livestock sale.

Clause 203 requires a pastoral house officer (other than a salesperson), if asked by a person with whom the officer is dealing, to produce the officer's licence for the person's inspection.

Clause 204 prohibits a pastoral house from employing, as a pastoral house salesperson, a person it knows, or ought to know, does not hold a registration certificate as a pastoral house salesperson.

A pastoral house is not permitted to employ as a pastoral house salesperson an executive officer of the pastoral house.

CHAPTER 7—AUCTIONEERS

PART 1—AUCTIONEER'S AUTHORISATION AND RESPONSIBILITIES

Division 1—What an auctioneer's licence authorises

Clause 205 provides that an auctioneer's licence authorises the holder to perform the activity of selling or attempting to sell or offering for sale or resale any property by way of auction. It also authorises an auctioneer, who

has been properly appointed or is otherwise authorised under this Act or another Act to sell the property, to sell it by any means during the auction period, which is the period for which the auctioneer has been appointed or otherwise permitted to sell the property.

An auctioneer's licence authorises the holder to perform the activity in carrying on a business alone or with others, or as an employee of an auctioneer, a real estate agent, a pastoral house or a motor dealer.

Division 2—Responsibilities of auctioneers for trainee auctioneers

Clause 206 requires an auctioneer to take reasonable steps to ensure that each trainee auctioneer under the auctioneer's supervision and instruction is properly supervised, acts only within the scope of the trainee's authority and otherwise complies with the Act.

An auctioneer who fails to comply is liable to disciplinary action.

Clause 207 provides that when a trainee auctioneer starts employment, the auctioneer supervising and instructing the trainee must immediately give the trainee an employment authority that clearly specifies the activities the trainee is authorised by the auctioneer to perform for the auctioneer during the trainee's period of training with the auctioneer.

PART 2—CONDUCT PROVISIONS

Division 1—Carrying on business

Clause 208 provides that an individual who carries on the business of an auctioneer with others is not required to hold an auctioneer's licence if at least 1 of the persons with whom the individual carries on business does hold a licence as an auctioneer, the individual does not perform the activities of an auctioneer and the individual meets the suitability requirements for holding a licence.

Clause 209 requires an auctioneer who is an individual and a principal licensee to be in charge of the auctioneer's business at the auctioneer's registered office. If the auctioneer has more than 1 place of business, the auctioneer must ensure that an auctioneer who is an individual is in charge of each other place of business.

If the auctioneer is a corporation, the corporation must ensure that the individual in charge of the corporation's business at the corporation's registered office is auctioneer. If the corporation has more than 1 place of business, the corporation must ensure that an auctioneer who is an individual is in charge of each other place of business.

In all cases, an individual is not permitted to be in charge of an auctioneer's business at more than 1 place.

Division 2—Appointment

Clause 210 provides that an auctioneer must not act for a client in performing an activity authorised by the licence unless the client has first appointed the auctioneer in writing.

The written appointment (for a single particular service or a continuing appointment) is required to state—

- the service to be performed and how it is to be performed;
- the day set for the auction;
- in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to an amount prescribed;
- the fees, charges and commission payable for the service;
- the expenses, including advertising, marketing and travelling expenses, the agent is authorised by the client to incur;
- the source and estimated amount of any rebate, discount, commission or benefit the agent may receive in relation to any expenses the agent may incur in connection with the performance of the service;
- any condition, limitation or restriction on the performance of the service;

- when the fees, charges and commission become payable;
- if a fee, charge or commission is payable for a service and it is expressed as a percentage of an estimated sale price, that the commission is worked out only on the actual sale price; and
- if the appointment is for a sole or exclusive agency, the date the appointment ends.

If the appointment is a continuing appointment, it must state the date the appointment ends, and that the appointment may be revoked on the giving of 90 days written notice, or some lesser period (not less than 30 days) agreed by the parties. The notice must be signed and given to the other party.

The auctioneer must give a copy the appointment, signed by the agent and client, to the client.

Clause 211 requires an appointment to be in the approved form and to contain a prominent statement that the client should seek independent legal advice before signing the appointment. If the appointment does not comply, it is ineffective from the time it is made.

Clause 212 provides that, if the appointment is for a sole or exclusive agency, the auctioneer must give the client a notice in the approved form, before the appointment is signed, stating—

- the proposed term of the appointment;
- the term is negotiable up to a maximum term of 60 days;
- whether the appointment is for a sole agency or an exclusive agency;
- the difference between a sole agency and an exclusive agency;
- the consequences for the client if the property is sold by someone other than the appointed auctioneer during the term of the sole or exclusive agency.

Clause 213 permits an auctioneer to be reappointed for a sole or exclusive agency for 1 or more further terms of not more than 60 days each. A reappointment must not be made earlier than 14 days before the preceding appointment is to end.

Clause 214 provides that if the notice about a sole or exclusive agency is not given to a client, or if the term of appointment is more than 60 days, the agent's appointment is ineffective. If a reappointment is made earlier than 14 days before the preceding appointment is made, or if the term of reappointment is more than 60 days, the reappointment is ineffective.

Division 3—Chattel auctions

Clause 215 prohibits an auctioneer from charging a buyer's premium on the sale of a chattel at a chattel auction unless, before the auction, the auctioneer obtains the written consent of the chattel's owner and discloses that a buyer's premium is payable by the buyer on the purchase of the chattel. The amount of buyer's premium that may be charged by the auctioneer is an amount prescribed by regulation.

Division 4—Recovery of reward or expense

Clause 216 applies to an auctioneer who performs a service of selling property. The auctioneer must not claim commission worked out on an amount that is more than the actual sale price of the property.

Clause 217 provides that a person is not entitled to sue for, recover or retain a reward or expense for performing an activity as an auctioneer unless, at the time the activity was performed, the person held an auctioneer's licence, was authorised under the licence to perform the activity and had been properly appointed in writing.

Clause 218 provides that a person is not entitled to sue for, recover or retain a reward for the performance of an activity as an auctioneer that is more than the amount of reward stated in the agent's appointment.

If the amount of reward is limited by regulation, the person is not entitled to sue for, recover or retain a reward greater than the amount allowed.

A person is not entitled to sue for, recover or retain expenses for the performance of an activity as an auctioneer that are more than the amount of expenses stated in the auctioneer's appointment and actually expended.

If the amount of expenses is limited by regulation, the person is not entitled to sue for, recover or retain expenses greater than the amount allowed.

Clause 219 provides that if a person is convicted of an offence under section 216 and the court is satisfied on the balance of probabilities that the person recovered or retained an amount to which the person was not entitled, the court must order the person to pay the amount to the client, whether or not any penalty has been imposed for the offence.

The order of the court may be filed by the client in a court having jurisdiction for the recovery of a debt of equal amount and enforced as a judgment of that court.

Division 5—Interests in property

Clause 220 provides that for this division, the term “obtain” includes being in any way concerned in obtaining.

Clause 221 provides that, if an auctioneer obtains an option to purchase property in which the auctioneer has a beneficial interest, from a client who has placed the property with the auctioneer for sale, the auctioneer has committed an offence. If a trainee auctioneer obtains an option to purchase property in which the trainee has a beneficial interest, from a client who has placed the property with the trainee’s supervising auctioneer for sale, the trainee has committed an offence.

It is an offence for an auctioneer to sell property in which the agent has a beneficial interest in an option to purchase the property.

Clause 222 provides that if an auctioneer obtains a beneficial interest in property which a client has placed with the auctioneer for sale, the auctioneer has committed an offence. If a trainee auctioneer obtains a beneficial interest in property that has been placed with the trainee’s supervising auctioneer for sale, the trainee has committed an offence.

An auctioneer or trainee auctioneer will not commit an offence if, before the earlier of the auction of the property or a contract for the sale is entered into, the auctioneer or the trainee obtains the client’s written acknowledgment in the approved form, that the client is aware that the auctioneer or the trainee is interested in obtaining a beneficial interest in the

property and consents to the interest being obtained. The auctioneer or trainee is required to act fairly and honestly in relation to the sale, and is not permitted to receive commission or other reward from the client for the sale. When the sale is made, the client must be in substantially as good a position as if the property had been sold at fair market value.

If the relevant auctioneer or trainee has not obtained an acknowledgment and the auctioneer or trainee knows, or ought to know, that an associate of the auctioneer or trainee intends to bid at the auction, the auctioneer or trainee must, immediately before the auction, identify the associate to those present at the auction and announce that person is an associate and intends to bid. Compliance with this requirement is taken to be sufficient to satisfy the preceding requirement for a written acknowledgment of the client.

Clause 223 provides that section 222 does not apply to livestock sales if the auctioneer obtains a client's written acknowledgment that the client is aware that the auctioneer or trainee is interested in obtaining a beneficial interest in the client's livestock, and the client consents to the interest being obtained.

Division 6—Lands not lawfully useable for residential purposes

Clause 224 states that, for this division, the term "vacant land" means land on which there are no structural improvements other than fencing.

Clause 225 provides that the division applies to a sale or proposed sale of vacant land if the sale is by an auctioneer, as an agent for another person or as the principal, of land—

- within the City of Brisbane area or a local government area or joint local government area under the *Local Government Act 1993*;
- that cannot, as at the day of sale, be lawfully used for residential purposes.

Clause 226 requires an auctioneer selling such land to give a proposed buyer a written statement, before the buyer signs a contract for the sale, containing the following particulars—

- identification of the land;
- the names and addresses of the seller and the proposed buyer;

- a clear statement that the land cannot lawfully be used for residential purposes;
- a clear statement that if the buyer erects a place of residence on the land or otherwise uses it for residential purposes unlawfully, the buyer may commit an offence and a named local government may be empowered to demolish the place of residence or other residential structure; and
- the date of the statement.

The statement must be signed by the auctioneer and the proposed buyer. The auctioneer must keep a copy of the statement at the auctioneer's registered office and make it available for inspection when an inspector asks to see it.

Clause 227 provides that a buyer may avoid a contract for the sale of the land by giving a written notice to the seller or the auctioneer if the buyer was not given the notice or if the notice the buyer was given was defective in a material way. The notice must be given within 6 months of the day the buyer entered into the contract to buy the land.

If the contract is avoided by the buyer, the seller and the auctioneer are jointly and severally liable to the buyer for all amounts paid by the buyer under the contract, and for the buyer's legal and other expenses in relation to the contract after the contract was signed. An auctioneer who is liable to the buyer for an amount paid under the contract must repay it within 14 days after the contract is avoided.

If the buyer avoids the contract after the contract is completed, the buyer must, after all amounts recoverable by the buyer have been paid, sign any documents necessary to convey title to the land to the person entitled to it, and deliver to that person any instrument of title the buyer has. The buyer is not liable for any costs associated with the conveyance and may recover the reasonable costs of the conveyance as a debt from the seller and the agent. The seller and the agent are jointly and severally liable to repay the conveyance costs to the buyer.

Clause 228 provides that the liability of an auctioneer to punishment for a breach of section 226 or 227 is additional to other legal liabilities imposed under section 227.

Division 7—Sales of livestock

Clause 229 provides that an auctioneer may pay over the proceeds of the sale of livestock to the person who appointed the auctioneer for the sale only if the auctioneer has known the person for at least 1 year, and, in the auctioneer's opinion, the person is of good repute, and the auctioneer has no reason to believe that the person was not lawfully entitled to sell the livestock. Alternatively, the auctioneer may rely on the certificate of a referee whom the auctioneer has known for at least 1 year and, who, in the auctioneer's opinion, is a person of good repute. A referee is permitted to give a certificate for a person only if the referee has known the person for at least 1 year, and, in the referee's opinion, the person is of good repute and the referee has no reason to believe that the person is not lawfully entitled to sell the livestock.

Clause 230 provides that, if a court finds, in relation to a sale of livestock by an auctioneer, that the seller was not lawfully entitled to sell, an auctioneer who had complied with the requirements of section 229 in good faith and without negligence, is not liable to the owner of the livestock because the auctioneer took possession or gave delivery of the livestock.

Division 8—Code of conduct

Clause 231 permits a regulation to be made prescribing a code of conduct about auctioneering practice, including setting conduct standards for auctioneers, employed licensees and trainee auctioneers, establishing principles for fair trading and providing for a system of complaint resolution.

Clause 232 entitles a person aggrieved by the conduct of an auctioneer or trainee auctioneer to make a written complaint to the chief executive about the conduct. The chief executive is given power to investigate the complaint, and if satisfied that the code of conduct has been breached, to take action against the auctioneer or trainee, including starting a disciplinary proceeding. The power may be exercised even if the person whose conduct is the subject of the complaint is no longer an auctioneer or trainee auctioneer.

PART 3—GUARANTEE OF TITLE FOR MOTOR VEHICLES

Clause 233 requires an auctioneer, or if the auctioneer is auctioning a used motor vehicle for a motor dealer or another auctioneer, the motor dealer or other auctioneer, to guarantee that a buyer of the vehicle at auction gains clear title to the vehicle at the time that property in the vehicle passes to the buyer.

It is a defence in a proceeding for an offence against an auctioneer for failure to comply, for the auctioneer to prove that all reasonable steps were taken to comply.

As soon as property in a vehicle passes to the buyer, the auctioneer must give the buyer an approved form that states—

- particulars about the vehicle, including its odometer reading at the time property passes;
- the named auctioneer (or if the vehicle was auctioned for a motor dealer or another auctioneer, the named motor dealer or auctioneer) guarantees that the buyer obtains clear title to the vehicle at the time that property passes; and
- any other prescribed particulars.

The auctioneer must give the original of the form to the buyer and keep a copy to be made available for immediate inspection by an inspector who asks to see it.

Within 48 hours after property in the vehicle has passed to the buyer, the auctioneer must give the buyer a security interest certificate for the vehicle that has been issued after property in the vehicle passed. The auctioneer is permitted to charge the buyer an amount for providing the security interest certificate that is not more than the amount prescribed by a regulation.

The auctioneer must ask the buyer to sign an approved form acknowledging receipt of the title guarantee form and the security interest certificate.

If the security interest certificate shows that a security interest is registered over the vehicle, the sale to the buyer is ineffective from the time it was made. The guarantor of clear title must do everything possible to

return the buyer to the position the buyer was in before purchasing the vehicle, including paying back the money the buyer paid for the vehicle and any amounts paid by the buyer for vehicle inspection, auctioneer's charges or stamp duty. An amount the buyer is entitled to be paid by the guarantor may be recovered as a debt.

PART 4—STATUTORY WARRANTY

Clause 234 sets out the definitions for Part 4.

Clause 235 provides that a warranted vehicle has a “defect” for the purposes of a statutory warranty if a part of the vehicle does not perform its intended function, or a part of the vehicle has deteriorated to an extent that it cannot be reasonably relied on to perform its intended function.

The term “warranted vehicle” is defined in the dictionary in schedule 3.

Clause 236 provides that the warranty period for a class A warranted vehicle starts on the day the vehicle is sold and ends at 5 p.m. on the first business day 3 months after the day the vehicle is sold, or when the vehicle has travelled 5 000 km after it is sold, whichever happens first. The warranty period for a class B warranted vehicle starts on the day the vehicle is sold and ends at 5 p.m. on the first business day 1 month after the day the vehicle was sold, or when the vehicle has travelled 1 000 km after it is sold, whichever happens first.

A warranted vehicle is sold when property in the vehicle passes from the seller to the buyer.

The dictionary in schedule 3 defines a “class A warranted vehicle” as a warranted vehicle that at the day of sale has an odometer reading of less than 160 000 km **and** that was manufactured less than 10 years before the day of the sale. A “class B warranted vehicle” is defined as a warranted vehicle that at the day of sale has an odometer reading of 160 000 km or more **or** was manufactured at least 10 years before the day of the sale.

Allowance is made for the period to be extended by 1 day for each day or part of a day the buyer is not in possession of the vehicle because a defect is being repaired under the statutory warranty by the auctioneer who sold the vehicle.

Clause 237 provides that the requirements of Part 4 apply to every warranted vehicle sold by an auctioneer as owner of the vehicle or on consignment for another auctioneer or a motor dealer. However, they do not apply to a sale of a motor vehicle by an auctioneer to another auctioneer or motor dealer, or on consignment for a person who is not an auctioneer or motor dealer.

Clause 238 requires an auctioneer to identify motor vehicles which do not have a statutory warranty when they are offered for sale.

Clause 239 requires an auctioneer to announce, immediately before the auction of an unwarranted vehicle, that the vehicle does not have a statutory warranty.

Immediately before the auction of any motor vehicle, an auctioneer is required to announce that the sale is not subject to a cooling-off period.

Clause 240 states that the warrantor of a warranted vehicle is the auctioneer or motor dealer who owns the vehicle immediately before it is sold by the auctioneer.

Clause 241 requires an auctioneer, immediately after the sale of a warranted vehicle, to give the buyer a notice in the approved form that states—

- the name, business address and hours of business of the warrantor;
- the length of the warranty period for the vehicle; and
- the defects to which the statutory warranty does not apply.

The buyer must acknowledge receipt of the notice by signing a copy of it.

Immediately after the sale of an unwarranted vehicle, the auctioneer must give the buyer a notice in the approved form stating that the vehicle does not have a statutory warranty. The buyer must acknowledge receipt of the notice by signing a copy of it.

Clause 242 provides that for the statutory warranty, the warrantor warrants that the warranted vehicle is free from defects at the time of sale and for the warranty period, and that defects in the vehicle reported during the warranty period will be repaired by the warrantor free of charge.

Clause 243 sets out defects in a warranted vehicle which are not covered by the statutory warranty. These include a defect in a tyre, a battery, a light, a radiator hose, or a vehicle accessory prescribed by regulation. A defect in a vehicle's paintwork or upholstery that should have been apparent on a reasonable inspection of the vehicle before the buyer took delivery is not covered. The warranty also does not cover a defect that arises after delivery to the buyer caused by, or incidental to, any accidental damage to the vehicle, or by the buyer's misuse of the vehicle or negligence or a defect in a vehicle accessory that was not fitted to the vehicle when it was sold.

Clause 244 sets out a buyer's obligations if the buyer of a warranted vehicle wishes to have the warrantor repair a defect that the buyer believes is covered by the warranty. The buyer is required to give the warrantor a defect notice before the warranty period expires and to deliver the vehicle to the warrantor or a person nominated by the warrantor to repair the vehicle. If a buyer makes reasonable efforts to deliver the vehicle to the warrantor but is unable to do so because the warrantor refuses to accept delivery, the buyer is taken to have delivered it and the warrantor is taken to have possession of it.

The place of delivery must not be more than 20 kilometres from the warrantor's place of business unless the warrantor and buyer agree.

Clause 245 requires a warrantor to keep a prescribed record of the day a warranted vehicle is delivered for repair and the day the vehicle is returned to the buyer.

Clause 246 provides that when a defect notice is given and the vehicle is delivered to the warrantor for repair, the warrantor must give the buyer a warranty advice informing the buyer whether the warrantor accepts or refuses to accept the defect as one to which the statutory warranty applies. If the warrantor fails to give the warranty advice within 5 business days of receiving the defect notice and delivery of the vehicle, the warrantor is taken as having accepted that the defect is covered.

Clause 247 provides that if a warrantor accepts the defect as one to which the statutory warranty applies, the warrantor must repair the vehicle, at the warrantor's expense, within 14 days, unless the warrantor has a reasonable excuse. If the warrantor nominates someone else to repair the vehicle, the warrantor must advise the buyer of the person's name and address.

A warrantor's obligation to repair the vehicle under this section continues even if the warrantor is no longer performing the activities of a licensee.

The vehicle is taken to have been repaired by the warrantor if the part of the vehicle affected by the defect is repaired so that it can be reasonably relied on to perform its intended function.

Clause 248 provides that if the warrantor has refused to accept the defect as one to which the statutory warranty applies, or has accepted the defect as one to which the statutory warranty applies but has failed to repair it within 14 days or failed to repair the defect so that the defective part can be reasonably relied on to perform its intended function, the buyer may refer the matter to a small claims tribunal.

In addition to orders it may make under the *Small Claims Tribunal Act 1973*, a small claims tribunal is given power to make—

- an order that the defect is or is not a defect to which the statutory warranty applies;
- an order extending the warranty period for the vehicle to a specified date;
- an order declaring the warranted vehicle is covered by the statutory warranty until a specified date.

The tribunal is also empowered to make an order that a warrantor pay a buyer a stated amount the tribunal decides is the reasonable cost of having a defect repaired if the warrantor has refused to accept the defect and the buyer has had the defect repaired by someone else and the tribunal decides that the defect was one to which the statutory warranty applied. In exercising this power, the tribunal must be satisfied that the vehicle was not able to be used by the buyer for a period during the warranty period, and that, taking together the period from which the tribunal's order is to be effective and the date the warranty period for the vehicle is to end and the period during which the vehicle was unable to be used by the buyer, the total time does not exceed the maximum period allowable for the statutory warranty.

Contravention of an order of the tribunal by a warrantor is a ground for starting disciplinary proceedings.

Clause 249 allows a buyer to apply to a court of competent jurisdiction if the amount involved in the application is greater than the prescribed amount for a small claims tribunal.

PART 5—GENERAL

Clause 250 defines the registered office of an auctioneer who is a principal licensee as the place specified by the auctioneer as the auctioneer's principal place of business in the auctioneer's licence application, or another place notified to the chief executive in the approved form. For an auctioneer who is an employed licensee, the registered office is the place specified by the employee in the employee's licence application, as the employee's business address, or another place notified to the chief executive in the approved form.

Clause 251 requires an auctioneer who is a principal licensee to notify the chief executive in the approved form, within 14 days, of any change in the auctioneer's registered office, the closing of any place where the auctioneer carries on business and the opening of any new place of business.

An employed licensee must notify the chief executive in the approved form, within 14 days, of any change in the employed licensee's registered office.

Clause 252 requires an auctioneer who is a principal licensee to display the auctioneer's name and any prescribed particulars at each place the auctioneer carries on business. If the auctioneer is not the person in charge of the auctioneer's business at a place, the auctioneer must also display the name of the auctioneer who is in charge of the auctioneer's business at that place. If the auctioneer publishes an advertisement about the auctioneer's business in a newspaper, or elsewhere, the advertisement is required to include all the particulars that are prescribed under a regulation.

Clause 253 requires an auctioneer who is a principal licensee to keep an employment register at each place where the auctioneer carries on business. The register must contain the name and other prescribed particulars of each employed licensee and trainee auctioneer under the supervision and instruction of the auctioneer. Also, the register must record the activities each trainee auctioneer is authorised to perform, and all changes that may occur in a trainee's particulars or activities.

Clause 254 applies when an auctioneer buys a motor vehicle in the course of the auctioneer's business, or accepts a motor vehicle for sale on consignment, from a person other than a financier of the auctioneer's business, another auctioneer or a motor dealer. The auctioneer is required to

obtain a signed statement from the seller containing prescribed particulars about the seller and the vehicle. The auctioneer is required to keep a copy of the statement and give a copy to the seller.

Clause 255 requires an auctioneer to give a buyer of a motor vehicle, immediately after the sale, a signed statement containing prescribed particulars about the owner and the vehicle. The auctioneer is required to keep a copy of the statement and give a copy to the buyer. The statement may form part of the contract for the sale of the vehicle.

PART 6—OFFENCES

Clause 256 prohibits a person from performing an activity that may be done only under the authority of an auctioneer’s licence unless the person holds a licence and the performance of the activity is authorised under the licence or unless the person is otherwise permitted under this Act or another Act to perform the activity.

A person must not act as an auctioneer unless the person holds a licence and is authorised under the licence to act or unless the person is otherwise permitted under this Act or another Act to act. A person “acts” as an auctioneer if the person performs an auction, or advertises, notifies or states that the person performs or is willing to perform auctions, or holds out as being ready to perform auctions.

Clause 257 prohibits a person from holding out that the person is a trainee auctioneer unless the person holds a certificate of registration as a trainee auctioneer.

Clause 258 prohibits an auctioneer from accepting an appointment to act for more than 1 party to a transaction. If an auctioneer fails to comply, the appointments are taken to be ineffective from the time they were made. However, this section does not apply if the transaction involves a livestock sale.

Clause 259 requires an auctioneer, if asked by a person with whom the auctioneer is dealing, to produce the auctioneer’s licence for the person’s inspection.

Clause 260 prohibits an auctioneer from employing, as a trainee auctioneer, a person the auctioneer knows, or ought to know, does not hold a registration certificate as a trainee auctioneer.

CHAPTER 8—PROPERTY DEVELOPERS

PART 1—PROPERTY DEVELOPER’S AUTHORISATION AND RESPONSIBILITIES

Division 1—Interpretation

Clause 261 defines the phrase “completes a residential land transaction”.

Division 2—Licences

Clause 262 provides that a property developer’s licence authorises the holder to complete more than 6 residential land transactions in any 12 month period.

A person who completes more than 6 residential land transactions in any 12 month period is taken to conduct the business of a property developer.

A property developer’s licence authorises a property developer to conduct the business of a property developer alone or with others.

Clause 263 provides that a property developer director’s licence authorises the holder to conduct the business of a stated property developer corporation at a stated place.

Division 3—Responsibilities of persons in charge of a licensee’s business for salespersons

Clause 264 requires a property developer to take reasonable steps to ensure that each property developer salesperson employed by the property developer is properly supervised, acts only within the scope of the employee’s employment authority and otherwise complies with the Act.

A property developer who fails to comply with the section is liable to disciplinary action.

Clause 265 provides that when a property developer employs a salesperson, the property developer must immediately give the salesperson an employment authority that clearly specifies the activities the salesperson is authorised by the property developer to perform on the property developer's behalf.

PART 2—CONDUCT PROVISIONS

Division 1—Carrying on business

Clause 266 provides that an individual who carries on the business of a property developer with others is not required to hold a property developer's licence if at least 1 of the persons with whom the individual carries on business does hold a licence as a property developer, the individual does not perform the activities of a property developer and the individual meets the suitability requirements for holding a licence.

Clause 267 requires a property developer who is an individual to be in charge of the property developer's business at the property developer's registered office. If the property developer has more than 1 place of business, the property developer must ensure that a property developer salesperson is in charge of each other place of business.

If the property developer is a corporation, the corporation must ensure that the individual in charge of the corporation's business at the corporation's registered office is a property developer. If the corporation has more than 1 place of business, the corporation must ensure that a property developer director or a property developer salesperson is in charge of each other place of business.

In all cases, an individual is not permitted to be in charge of a property developer's business at more than 1 place.

Division 2—Disclosure of interest

Clause 268 requires a property developer or a person acting for the property developer in the sale of residential property, to disclose to a prospective buyer of the property—

- that the property developer holds an interest in the property;
- any relationship, and the nature of the relationship, the property developer has with anyone to whom the property developer refers the buyer for professional services associated with the sale; and
- whether the property developer derives or expects to derive any consideration or benefit from a person to whom the property developer refers the buyer, and, if so, the amount, value or nature of the consideration or benefit.

Disclosure is effective only if it is made to and acknowledged by the buyer in the approved form before a contract for the sale of the property is entered into.

Division 3—Code of conduct

Clause 269 permits a regulation to be made prescribing a code of conduct about property developer practice, including setting conduct standards for property developers and property developer salespersons, establishing principles for fair trading and providing for a system of complaint resolution.

Clause 270 entitles a person aggrieved by the conduct of a property developer or a property developer salesperson to make a written complaint to the chief executive about the conduct. The chief executive is given power to investigate the complaint, and if satisfied that the code of conduct has been breached, to take action against the developer or salesperson, including starting a disciplinary proceeding. The power may be exercised even if the person whose conduct is the subject of the complaint is no longer a property developer or a property developer salesperson.

PART 3—GENERAL

Clause 271 defines the registered office of a property developer as the place specified by the property developer as the property developer's principal place of business in the property developer's licence application, or another place notified to the chief executive in the approved form.

Clause 272 requires a property developer to notify the chief executive in the approved form, within 14 days, of any change in the property developer's registered office, the closing of any place where the property developer carries on business and the opening of any new place of business.

Clause 273 requires a property developer to display the property developer's name and any prescribed particulars at each place the property developer carries on business. If the property developer is not the person in charge of the property developer's business at a place, the property developer must also display the name of the property developer director or property developer salesperson who is in charge of the property developer's business at that place. If the property developer publishes an advertisement about the property developer's business in a newspaper, or elsewhere, the advertisement is required to include all the particulars that are prescribed under a regulation.

Clause 274 requires a property developer to keep an employment register at the property developer's registered office. The property developer must enter in the register the name and other prescribed particulars of every person who is employed as a registered employee by the property developer. The property developer must also enter, for each property developer salesperson, the activities the employee is authorised to perform for the property developer.

The particulars and authorised activities must be entered immediately the employee is employed and any change that happens during the employment must be immediately entered. A regulation may prescribe the form of the register.

PART 4—OFFENCES

Clause 275 prohibits a person from completing more than 6 residential land transactions within any 12 month period unless the person holds a property developer's licence.

Clause 276 prohibits a person from holding out that the person is a property developer salesperson unless the person holds a registration certificate as a property developer salesperson.

Clause 277 requires a property developer, if asked by a person with whom the property developer is dealing, to produce the property developer's licence for the person's inspection.

Clause 278 prohibits a property developer from employing, as a property developer salesperson, a person the property developer knows, or ought to know, does not hold a registration certificate as a property developer salesperson.

A property developer who is an individual is not permitted to employ as a property developer salesperson, himself or herself, or another individual with whom the principal licensee carries on business as a property developer.

A property developer that is a corporation is not permitted to employ as a property developer salesperson an executive officer of the corporation.

CHAPTER 9—MOTOR DEALERS

PART 1—MOTOR DEALER'S AUTHORISATION AND RESPONSIBILITIES

Division 1—Motor dealer's licence

Clause 279 provides that a motor dealer's licence authorises the holder, in carrying on the business of motor dealing, to perform the following activities—

- acquiring, primarily for resale, used motor vehicles;
- selling used motor vehicles;
- selling used motor vehicles on consignment as an agent for others for reward;
- selling a leased motor vehicle to a lessee under the terms of a lease;

- acquiring used motor vehicles, as complete or incomplete units, primarily to break them up for sale as parts or to assemble them for sale as complete units or parts;
- selling used motor vehicles broken up as parts or assembled as complete units or parts;
- negotiating, under a consultancy arrangement, the purchase or sale of a used motor vehicle for a person who is not a motor dealer or an auctioneer.

A motor dealer's licence authorises the holder to perform the activities as an employee of another motor dealer who carries on the business of motor dealing.

The term "business of motor dealing" is defined as excluding the business of a financier.

Division 2—Responsibilities of persons in charge of a licensee's business for motor salespersons

Clause 280 requires a motor dealer who is a principal licensee to take reasonable steps to ensure that each motor salesperson employed by the motor dealer is properly supervised, acts only within the scope of the employee's employment authority and otherwise complies with the Act. An employed motor dealer who is in charge of a principal licensee's business at a place of business must take reasonable steps to ensure that each motor dealer salesperson employed at that place is properly supervised, acts only within the scope of the employee's employment authority and otherwise complies with the Act.

A motor dealer who fails to comply with the section is liable to disciplinary action.

Clause 281 provides that when a motor dealer employs a salesperson, the motor dealer must immediately give the salesperson an employment authority that clearly specifies the activities the salesperson is authorised by the motor dealer to perform on the motor dealer's behalf.

PART 2—CONDUCT PROVISIONS***Division 1—Carrying on business***

Clause 282 provides that an individual who carries on the business of a motor dealer with others is not required to hold a motor dealer's licence if at least 1 of the persons with whom the individual carries on business does hold a licence as a motor dealer, the individual does not perform the activities of a motor dealer and the individual meets the suitability requirements for holding a licence.

Clause 283 requires a motor dealer who is an individual and a principal licensee to be in charge of the motor dealer's business at the motor dealer's registered office. If the motor dealer has more than 1 place of business, the motor dealer must ensure that a motor dealer who is an individual is in charge of each other place of business.

If the motor dealer is a corporation, the corporation must ensure that the individual in charge of the corporation's business at the corporation's registered office is a motor dealer. If the corporation has more than 1 place of business, the corporation must ensure that a motor dealer who is an individual is in charge of each other place of business.

In all cases, an individual is not permitted to be in charge of a motor dealer's business at more than 1 place.

Division 2—Consignment selling

Clause 284 provides that a motor dealer must not act for a client to sell the client's motor vehicle on consignment unless the client has first appointed the motor dealer in writing.

The written appointment (for a single particular service or a continuing appointment) is required to state—

- the term of the appointment;
- the service to be performed and how it is to be performed;

- the way that fees, charges and commission (that may be prescribed under a regulation) payable for the service are negotiable up to the prescribed amount;
- for a single appointment, if commission is payable and expressed as a percentage of sale price, the amount of commission expressed in dollars based on the sale price;
- the fees, charges and commission payable for the service;
- the expenses, including advertising and marketing expenses, the motor dealer is authorised by the client to incur;
- the source and estimated amount of any rebate, discount, commission or benefit the motor dealer may receive in relation to any expenses the motor dealer may incur in connection with the performance of the service;
- any condition, limitation or restriction on the performance of the service; and
- when the fees, charges and commission become payable.

If the appointment is a continuing appointment, it must state the date the appointment ends, and that the appointment may be revoked on the giving of 90 days written notice, or some lesser period (not less than 30 days) agreed by the parties. The notice must be signed and given to the other party.

If the appointment authorises an auction sale, a separate auctioneer appointment under section 210 is not required.

The motor dealer must give a copy the appointment, signed by the motor dealer and client, to the client.

Clause 285 requires an appointment to be in the approved form and to contain a prominent statement that the client should seek independent legal advice before signing the appointment. If the appointment does not comply, it is ineffective from the time it is made.

Clause 286 prohibits a motor dealer from accepting a trade-in from the buyer of a motor vehicle being sold on consignment. However, if the motor dealer buys the property offered as a trade-in as part of a separate transaction between the dealer and the buyer, the motor dealer does not contravene the provision.

Division 3—Recovery of commission or reward

Clause 287 provides that if a motor dealer performs an activity of selling a motor vehicle on consignment and claims commission worked out as a percentage, the motor dealer must not claim commission worked out as a percentage of an amount more than the actual sale price of the vehicle.

Clause 288 provides that a person is not entitled to sue for, recover or retain a commission, reward or expense for a sale of a vehicle on consignment unless, at the time the sale happened, the person held a motor dealer's licence, was authorised under the licence to sell motor vehicles on consignment, and had been properly appointed in writing.

Clause 289 provides that if a person is convicted of an offence under section 287 and the court is satisfied on the balance of probabilities that the person recovered or retained an amount to which the person was not entitled, the court must order the person to pay the amount to the client, whether or not any penalty has been imposed for the offence.

The order of the court may be filed by the client in a court having jurisdiction for the recovery of a debt of equal amount and enforced as a judgment of that court.

Division 4—Interests in property

Clause 290 provides that for this division, the term "obtain" includes being in any way concerned in obtaining.

Clause 291 provides that, if a motor dealer obtains an option to purchase a used motor vehicle in which the motor dealer has a beneficial interest, from a client who has placed the vehicle with the motor dealer for sale on consignment, the motor dealer has committed an offence. If a motor salesperson obtains an option to purchase a used motor vehicle in which the salesperson has a beneficial interest, from a client who has placed the vehicle with the salesperson's motor dealer employer for sale on consignment, the salesperson has committed an offence.

It is an offence for a motor dealer to sell a used motor vehicle in which the motor dealer has a beneficial interest in an option to purchase the vehicle.

Clause 292 provides that if a motor dealer obtains a beneficial interest in a used motor vehicle that a client has placed with the motor dealer for sale on consignment, the motor dealer has committed an offence. If a motor salesperson obtains a beneficial interest in a used motor vehicle that has been placed with the salesperson's motor dealer employer by a client of the motor dealer for sale on consignment, the salesperson has committed an offence.

A motor dealer or a motor salesperson will not commit an offence if, before a contract for the sale is entered into, the motor dealer or salesperson obtains the client's written acknowledgment in the approved form, that the client is aware that the motor dealer or salesperson is interested in obtaining a beneficial interest in the vehicle and consents to the interest being obtained. The motor dealer or salesperson is required to act fairly and honestly in relation to the sale, and is not permitted to receive commission or other reward from the client for the sale. When the sale is made, the client must be in substantially as good a position as if the vehicle had been sold at fair market value.

Division 5—Code of conduct

Clause 293 permits a regulation to be made prescribing a code of conduct about motor dealing practice, including setting conduct standards for motor dealers and motor salespersons, establishing principles for fair trading and providing for a system of complaint resolution.

Clause 294 entitles a person aggrieved by the conduct of a motor dealer or a motor salesperson to make a written complaint to the chief executive about the conduct. The chief executive is given power to investigate the complaint, and if satisfied that the code of conduct has been breached, to take action against the motor dealer or salesperson, including starting a disciplinary proceeding. The power may be exercised even if the person whose conduct is the subject of the complaint is no longer a motor dealer or motor salesperson.

PART 3—GUARANTEE OF TITLE FOR MOTOR VEHICLES

Clause 295 applies to the sale of a used motor vehicle by or for a motor dealer other than by auction. The motor dealer who owns the vehicle, or who is appointed to sell the vehicle on consignment by a person other than another motor dealer or auctioneer, is required to guarantee that the buyer gains clear title to the vehicle at the time that property in the vehicle passes to the buyer.

It is a defence in a proceeding for an offence against motor dealer for failure to comply, for the motor dealer to prove that all reasonable steps were taken to comply.

As soon as property in a vehicle passes to the buyer, the motor dealer must give the buyer an approved form that states—

- particulars about the vehicle, including its odometer reading at the time property passes; and
- that the named motor dealer guarantees that the buyer obtains clear title to the vehicle at the time that property passes; and
- any other prescribed particulars.

As soon as property in the vehicle passes to the buyer, the motor dealer also must give the buyer a security interest certificate for the vehicle issued on the day property in the vehicle passes. The motor dealer is permitted to charge the buyer an amount for providing the security interest certificate that is not more than the amount prescribed by a regulation.

The motor dealer must ask the buyer to sign an approved form acknowledging receipt of the title guarantee form and the security interest certificate and must give the buyer the original copy of the statement.

PART 4—COOLING-OFF PERIOD

Clause 296 contains particular definitions for Part 4.

Clause 297 gives the meaning of the term “cooling-off period”.

Clause 298 provides that Part 4 applies to sales of used motor vehicles by motor dealers, but does not apply to sales by a motor dealer by auction, or on consignment, unless the owner of the vehicle is a motor dealer or auctioneer, or to another motor dealer.

Clause 299 requires a motor dealer to identify, in the way prescribed, that used motor vehicles on sale on consignment are not subject to a cooling-off period. However, this requirement does not apply to vehicles on sale on consignment by a motor dealer or an auctioneer.

Clause 300 provides that if a used motor vehicle is not subject to a prior contract with a prospective buyer, the motor dealer must give a prospective buyer a written statement in the approved form immediately before the buyer signs any contract for the purchase of the vehicle.

The statement is required to include the following particulars—

- clear identification of the vehicle;
- the names and addresses of the motor dealer and the buyer;
- a clear statement, in the way prescribed, that the buyer may avoid the contract during the cooling-off period;
- the day and time that the statement is given;
- the day and time that the cooling-off period ends;
- the amount of non-refundable deposit the buyer forfeits if the buyer avoids the contract; and
- any other thing prescribed.

The statement must be signed and dated by the prospective buyer and the motor dealer, or a person authorised by the motor dealer.

Clause 301 applies if a used motor vehicle is subject to a prior contract with a prospective buyer that is not immediately enforceable because the cooling-off period has not expired.

A motor dealer is permitted to give not more than 1 other person an option to purchase the vehicle even though the vehicle is subject to a prior contract. A motor dealer who gives an option to purchase to another person while an option is still current commits an offence.

The motor dealer must give the option holder a written statement in the approved form immediately before the option holder signs the option.

The statement is required to include the following particulars—

- clear identification of the vehicle;
- the names and addresses of the motor dealer and the option holder;
- the option to purchase is conditional on the buyer under a prior contract for the sale of the vehicle exercising a right within the cooling-off period to not proceed with the purchase;
- the option holder has no legally enforceable rights under the option to buy the vehicle unless the prior contract does not proceed;
- the time when the option holder may exercise rights under the option;
- the day and time when the statement is given;
- the amount of non-refundable deposit forfeited by the option holder if the option holder declines to enter into a contract to buy the vehicle for any reason other than because the prior contract did proceed; and
- any other thing prescribed.

The option holder and motor dealer must both sign the statement, and the motor dealer must keep a copy and give the original to the option holder.

Clause 302 provides that if a buyer has bought a used motor vehicle and has not been given a statement about the cooling-off period as required by section 300, or has been given a statement that is defective in a material particular, the buyer may avoid the sale contract by giving the motor dealer a written notice within 7 days of property in the vehicle passing to the buyer.

If the buyer avoids the contract, the motor dealer is required to do everything possible to return the buyer to the position the buyer was in before the vehicle was purchased. If this is not possible, the motor dealer is liable for any financial loss suffered by the buyer because the buyer cannot be returned to the original position.

Clause 303 requires a contract for the sale of a used motor vehicle by a motor dealer to contain a clearly headed cooling-off period clause. The cooling-off period clause must state the following matters—

- the day and time the cooling-off period starts;
- the day and time the cooling-off period ends;
- that property in the vehicle does not pass to the buyer until the end of the cooling-off period unless the buyer takes physical possession of the vehicle for a purpose other than a vehicle inspection or a test drive;
- that the buyer or the buyer's agent is permitted to physically possess the vehicle during the cooling-off period only for a test drive or to have the vehicle independently inspected;
- that the buyer has a right to avoid the contract at any time during the cooling-off period by giving written notice to the motor dealer;
- the amount of non-refundable deposit forfeited by the buyer if the buyer avoids the contract during the cooling-off period; and
- that if the contract is avoided during the cooling-off period, the motor dealer is required to return any trade-in offered by the buyer that is in the dealer's possession and any deposit money paid, less the amount of non-refundable deposit.

A contract which does not contain a cooling-off clause that is clearly headed or that states all the required matters will not comply with the Act. A buyer will have a right to avoid the contract by giving written notice to the motor dealer within 7 days of property in the vehicle passing to the buyer.

Clause 304 provides that the amount of non-refundable deposit that is the consideration payable by a buyer for the cooling-off period, is to be prescribed by regulation. The non-refundable deposit may be paid as the deposit or part of the deposit for the vehicle. If the contract is not avoided during the cooling-off period, the non-refundable deposit must be deducted from the purchase price of the vehicle. If no deposit is paid for the vehicle, the motor dealer is taken to have waived the payment of the non-refundable deposit

Clause 305 provides that the amount of non-refundable deposit that is the consideration payable for an option to purchase, is to be prescribed by regulation. If the option holder declines to enter into a contract to buy the vehicle for any reason other than because the prior contract did proceed, the non-refundable deposit paid by the option holder is forfeited. If the option holder enters into a contract to buy the vehicle, the non-refundable deposit paid for the option becomes the non-refundable deposit for the cooling-off

period. If the option holder does not pay consideration for the option, the motor dealer is taken to have waived the payment of the non-refundable deposit.

Clause 306 prohibits a motor dealer from harassing or coercing a buyer to dissuade or prevent the buyer from exercising a right the buyer has under the cooling-off provisions.

Clause 307 provides that, during a cooling-off period, property does not pass—

- in a used motor vehicle—to a buyer until the cooling-off period ends;
- in a trade-in vehicle offered by a buyer—to a motor dealer until the cooling-off period ends;
- in a deposit, other than a non-refundable deposit, paid by a buyer—to a motor dealer until the cooling-off period ends.

Clause 308 provides that a buyer has a right to avoid a contract to buy a used motor vehicle during the cooling-off period.

Clause 309 sets out the procedure a buyer must follow to avoid a contract.

Clause 310 provides for the consequences when a contract is avoided. The buyer's written notice to the motor dealer brings the contract and any related contract, such as a loan agreement or an insurance contract, to an end. If the motor dealer has given an option dependent on the failure of the prior contract, the motor dealer must immediately notify the option holder.

Clause 311 permits a motor dealer to accept a trade-in or other consideration from a buyer before the end of the cooling-off period. However, the motor dealer is prohibited from dealing in the trade-in or other consideration before the cooling-off period ends, because if the buyer avoids the contract, the motor dealer must be in a position to immediately return the trade-in or other consideration to the buyer at no cost to the buyer.

PART 5—STATUTORY WARRANTY

Clause 312 sets out the definitions for Part 5.

Clause 313 provides that a warranted vehicle has a “defect” for the purposes of a statutory warranty if a part of the vehicle does not perform its intended function, or a part of the vehicle has deteriorated to an extent that it cannot be reasonably relied on to perform its intended function.

The term “warranted vehicle” is defined in the dictionary in schedule 3.

Clause 314 provides that the warranty period for a class A warranted vehicle starts on the day the vehicle is sold and ends at 5 p.m. on the first business day 3 months after the day the vehicle is sold, or when the vehicle has travelled 5 000 km after it is sold, whichever happens first. The warranty period for a class B warranted vehicle starts on the day the vehicle is sold and ends at 5 p.m. on the first business day 1 month after the day the vehicle was sold, or when the vehicle has travelled 1 000 km after it is sold, whichever happens first.

The dictionary in schedule 3 defines a “class A warranted vehicle” as a warranted vehicle that at the day of sale has an odometer reading of less than 160 000 km **and** that was manufactured less than 10 years before the day of the sale. A “class B warranted vehicle” is defined as a warranted vehicle that at the day of sale has an odometer reading of 160 000 km or more **or** was manufactured at least 10 years before the day of the sale.

Allowance is made for the period to be extended by 1 day for each day the buyer is not in possession of the vehicle because a defect is being repaired under the statutory warranty by the motor dealer who sold the vehicle.

Clause 315 provides that the requirements of Part 5 apply to every warranted vehicle sold by motor dealer as owner of the vehicle or on consignment for another motor dealer or an auctioneer. However, they do not apply to a sale of a motor vehicle by motor dealer to another motor dealer or auctioneer, or on consignment for a person who is not an auctioneer or motor dealer.

Clause 316 requires motor dealer to identify motor vehicles which do not have a statutory warranty when they are offered for sale.

Clause 317 requires a motor dealer, immediately before the sale of a warranted vehicle, to give the buyer a notice in the approved form that states—

- the name, business address and hours of business of the warrantor;

- the length of the warranty period for the vehicle; and
- the defects to which the statutory warranty does not apply.

The buyer must acknowledge receipt of the notice by signing a copy of it.

Immediately before the sale of an unwarranted vehicle, the motor dealer must give the buyer a notice in the approved form stating that the vehicle does not have a statutory warranty. The buyer must acknowledge receipt of the notice by signing a copy of it.

Clause 318 provides that for the statutory warranty, the warrantor warrants that the warranted vehicle is free from defects at the time of sale and for the warranty period, and that defects in the vehicle reported during the warranty period will be repaired by the warrantor free of charge.

Clause 319 sets out defects in a warranted vehicle which are not covered by the statutory warranty. These include a defect in a tyre, a battery, a light, a radiator hose, or a vehicle accessory prescribed by regulation. A defect in a vehicle's paintwork or upholstery that should have been apparent on a reasonable inspection of the vehicle before the buyer took delivery is not covered. The warranty also does not cover a defect that arises after delivery to the buyer caused by, or incidental to, any accidental damage to the vehicle, or by the buyer's misuse of the vehicle or negligence or a defect in a vehicle accessory that was not fitted to the vehicle when it was sold.

Clause 320 sets out a buyer's obligations if the buyer of a warranted vehicle wishes to have the warrantor repair a defect that the buyer believes is covered by the warranty. The buyer is required to give the warrantor a defect notice before the warranty period expires and to deliver the vehicle to the warrantor or a person nominated by the warrantor to repair the vehicle. If a buyer makes reasonable efforts to deliver the vehicle to the warrantor but is unable to do so because the warrantor refuses to accept delivery, the buyer is taken to have delivered it and the warrantor is taken to have possession of it.

Clause 321 requires a warrantor to keep a prescribed record of the day a warranted vehicle is delivered for repair and the day the vehicle is returned to the buyer.

Clause 322 provides that when a defect notice is given and the vehicle is delivered to the warrantor for repair, the warrantor must give the buyer a warranty advice informing the buyer whether the warrantor accepts or refuses to accept the defect as one to which the statutory warranty applies. If

the warrantor fails to give the warranty advice within 5 business days of receiving the defect notice and delivery of the vehicle, the warrantor is taken as having accepted that the defect is covered.

Clause 323 provides that if a warrantor accepts the defect as one to which the statutory warranty applies, the warrantor must repair the vehicle, at the warrantor's expense, within 14 days, unless the warrantor has a reasonable excuse. If the warrantor nominates someone else to repair the vehicle, the warrantor must advise the buyer of the person's name and address.

A warrantor's obligation to repair the vehicle under this section continues even if the warrantor is no longer performing the activities of a licensee.

The vehicle is taken to have been repaired by the warrantor if the part of the vehicle affected by the defect is repaired so that it can be reasonably relied on to perform its intended function.

Clause 324 provides that if the warrantor has refused to accept the defect as one to which the statutory warranty applies, or has accepted the defect as one to which the statutory warranty applies but has failed to repair it within 14 days or so that the defective part can be reasonably relied on to perform its intended function, the buyer may refer the matter to a small claims tribunal.

In addition to orders it may make under the *Small Claims Tribunal Act 1973*, a small claims tribunal is given power to make—

- an order that the defect is or is not a defect to which the statutory warranty applies;
- an order extending the warranty period for the vehicle to a specified date;
- an order declaring the warranted vehicle is covered by the statutory warranty until a specified date.

The tribunal is also empowered to make an order that a warrantor pay a buyer a stated amount the tribunal decides is the reasonable cost of having a defect repaired if the warrantor has refused to accept the defect and the buyer has had the defect repaired by someone else and the tribunal decides that the defect was one to which the statutory warranty applied. In exercising this power, the tribunal must be satisfied that the vehicle was not able to be used by the buyer for a period during the warranty period, and that, taking together the period from which the tribunal's order is to be effective and the

date the warranty period for the vehicle is to end and the period during which the vehicle was unable to be used by the buyer, the total time does not exceed the maximum period allowable for the statutory warranty.

Contravention of an order of the tribunal by a warrantor is a ground for starting disciplinary proceedings.

Clause 325 allows a buyer to apply to a court of competent jurisdiction if the amount involved in the application is greater than the prescribed amount for a small claims tribunal.

PART 6—GENERAL

Clause 326 defines the registered office of a motor dealer who is a principal licensee as the place specified by the motor dealer as the motor dealer's principal place of business in the motor dealer's licence application, or another place notified to the chief executive in the approved form. For a motor dealer who is an employed licensee, the registered office is the place specified by the employee in the employee's licence application, as the employee's business address, or another place notified to the chief executive in the approved form.

Clause 327 requires motor dealer who is a principal licensee to notify the chief executive in the approved form, within 14 days, of any change in the motor dealer's registered office, the closing of any place where the motor dealer carries on business and the opening of any new place of business.

An employed licensee must notify the chief executive in the approved form, within 14 days, of any change in the employed licensee's registered office.

Clause 328 requires motor dealer who is a principal licensee to display the motor dealer's name and any prescribed particulars at each place the motor dealer carries on business. If the motor dealer publishes an advertisement about the motor dealer's business in a newspaper, or elsewhere, the advertisement is required to include all the particulars that are prescribed under a regulation.

Clause 329 requires a motor dealer who is a principal licensee to keep an employment register at the motor dealer's registered office. The motor dealer must enter in the register the name and other prescribed particulars of

every person who is employed as a motor dealer or motor salesperson by the motor dealer. The motor dealer must also enter, for each motor salesperson, the activities the employee is authorised to perform for the motor dealer.

The particulars and authorised activities must be entered immediately the employee is employed and any change that happens during the employment must be immediately entered. A regulation may prescribe the form of the register.

Clause 330 requires a motor dealer, who is a principal licensee or a motor dealer in charge of a principal licensee's business at a place of business, to keep a transactions register at each place of business. If the motor dealer keeps the register in electronic form, it is sufficient compliance if the register can be accessed electronically and printed as hard copy at each place of business. The register must contain prescribed particulars of every transaction entered into by the motor dealer in the course of business. The dealer must enter the particulars for each transaction within 24 hours after the transaction is completed.

The form of the register may be prescribed by regulation.

Clause 331 requires a motor dealer who buys a motor vehicle or accepts a motor vehicle for sale on consignment, to obtain from the seller (other than another motor dealer, an auctioneer or a financier of the motor dealer's business), a signed statement of prescribed particulars about the seller and the vehicle. The motor dealer must retain a copy of the statement and give a copy to the seller.

Clause 332 requires a motor dealer who sells a motor vehicle, either personally or on consignment, to give the buyer a signed statement of prescribed particulars about the owner of the vehicle and the vehicle. The motor dealer must retain a copy of the statement and give a copy to the seller. The statement is permitted to be included in the sale contract for the vehicle.

Clause 333 requires that a contract for the sale of a motor vehicle by a motor dealer must be in writing and must contain any prescribed particulars. The motor dealer must give a copy of the contract to every person who signs it immediately it is signed. A contract for the sale of a motor vehicle by a motor dealer that is not in writing is not enforceable against the buyer.

PART 7—OFFENCES

Clause 334 prohibits a person from carrying on the business of a motor dealer unless the person holds a licence and the activities performed in carrying on the business are authorised under the licence.

A person carries on business as a motor dealer if the person advertises, notifies or states that the person carries on the business of motor dealing, either generally, or in relation to a single transaction, or in any way holds out as being ready to carry on the business, either generally, or in relation to a single transaction. However, this does not apply to a person who carries on a business primarily concerned with hiring out or leasing motor vehicles.

Clause 335 prohibits a person from holding out that the person is a motor salesperson unless the person holds a registration certificate as a motor salesperson.

Clause 336 prohibits motor dealer from accepting an appointment to act for more than 1 party to a transaction. If a motor dealer fails to comply, the appointments are taken to be ineffective from the time they were made.

Clause 337 requires a motor dealer, if asked by a person with whom the motor dealer is dealing, to produce the motor dealer's licence for the person's inspection.

Clause 338 prohibits a motor dealer from employing, as a motor salesperson, a person the motor dealer knows, or ought to know, does not hold a registration certificate as a motor salesperson.

A principal licensee who is an individual is not permitted to employ as a motor salesperson, himself or herself, or another individual with whom the principal licensee carries on business as a motor dealer.

A principal licensee that is a corporation is not permitted to employ as a motor salesperson an executive officer of the corporation.

CHAPTER 10—COMMERCIAL AGENTS

PART 1—COMMERCIAL AGENT'S AUTHORISATION AND RESPONSIBILITIES

Division 1—Commercial agent's licence

Clause 339 provides that a commercial agent's licence authorises the holder to perform the following activities as an agent for others for reward—

- finding, or repossessing, for a person goods or chattels that the person is entitled to repossess under an agreement;
- collecting, or requesting payment of, debts;
- serving a writ, claim, application, summons or other process.

A licence authorises the holder to perform the activities in carrying on a business alone or with others, or as an employee of someone.

Division 2—Responsibilities of persons in charge of a licensee's business for commercial subagents

Clause 340 requires a commercial agent who is a principal licensee to take reasonable steps to ensure that each commercial subagent employed by the agent is properly supervised, acts only within the scope of the employee's employment authority and otherwise complies with the Act. An employed commercial agent who is in charge of a principal licensee's business at a place of business must take reasonable steps to ensure that each commercial subagent employed at that place is properly supervised, acts only within the scope of the employee's employment authority and otherwise complies with the Act.

A commercial agent who fails to comply with the section is liable to disciplinary action.

Clause 341 provides that when a commercial agent employs a subagent, the agent must immediately give the subagent an employment authority that clearly specifies the activities the subagent is authorised by the agent to perform on the agent's behalf.

PART 2—CONDUCT PROVISIONS

Division 1—Carrying on business

Clause 342 provides that an individual who carries on the business of a commercial agent with others is not required to hold a commercial agent's licence if at least 1 of the persons with whom the individual carries on business does hold a licence as a commercial agent, the individual does not perform the activities of a commercial agent and the individual meets the suitability requirements for holding a licence.

Clause 343 requires a commercial agent who is an individual and a principal licensee to be in charge of the agent's business at the agent's registered office. If the agent has more than 1 place of business, the agent must ensure that a commercial agent who is an individual is in charge of each other place of business.

If the commercial agent is a corporation, the corporation must ensure that the individual in charge of the corporation's business at the corporation's registered office is a commercial agent. If the corporation has more than 1 place of business, the corporation must ensure that a commercial agent who is an individual is in charge of each other place of business.

In all cases, an individual is not permitted to be in charge of a commercial agent's business at more than 1 place.

Division 2—Appointment

Clause 344 provides that a commercial agent must not act for a client in performing an activity authorised by the licence unless the client has first appointed the agent in writing.

The written appointment (for a single particular service or a continuing appointment) is required to state—

- the service to be performed and how it is to be performed;
- the way that fees, charges and commission (that may be prescribed under a regulation) payable for the service are negotiable up to the prescribed amount;
- for a single appointment, if commission is payable and expressed as a percentage of an amount recovered, the amount of commission expressed in dollars based on the amount;
- the fees, charges and commission payable for the service;
- the expenses, including travelling expenses, the agent is authorised by the client to incur;
- the source and estimated amount of any rebate, discount or commission the agent may receive in relation to any expenses the agent may incur in connection with the performance of the service;
- any condition, limitation or restriction on the performance of the service;
- when the fees, charges and commission become payable.

If the appointment is a continuing appointment, it must state the date the appointment ends, and that the appointment may be revoked on the giving of 90 days written notice, or some lesser period (not less than 30 days) agreed by the parties. The notice must be signed and given to the other party.

The commercial agent must give a copy the appointment, signed by the agent and client, to the client.

Clause 345 requires an appointment to be in the approved form. If the appointment does not comply, it is ineffective from the time it is made.

Division 3—Recovery of expenses and costs

Clause 346 provides that a person is not entitled to sue for, recover or retain a reward or expense for performing an activity as a commercial agent unless, at the time the activity was performed, the person held a commercial agent's licence, was authorised under the licence to perform the activity and had been properly appointed in writing.

Clause 347 prohibits a person from recovering or attempting to recover, from a debtor, a commercial agent's costs or expenses of collecting or attempting to collect a debt owed by the debtor, or repossessing or attempting to repossess goods and chattels from a debtor. Costs and expenses recovered in contravention of this requirement may be recovered by the debtor as a debt.

Division 4—Code of conduct

Clause 348 permits a regulation to be made prescribing a code of conduct about commercial agency practice, including setting conduct standards for commercial agents and commercial subagents, establishing principles for fair trading and providing for a system of complaint resolution.

Clause 349 entitles a person aggrieved by the conduct of a commercial agent or subagent to make a written complaint to the chief executive about the conduct. The chief executive is given power to investigate the complaint, and if satisfied that the code of conduct has been breached, to take action against the commercial agent or subagent, including starting a disciplinary proceeding. The power may be exercised even if the person whose conduct is the subject of the complaint is no longer a commercial agent or subagent.

PART 3—GENERAL

Clause 350 defines the registered office of a commercial agent who is a principal licensee as the place specified by the commercial agent as the commercial agent's principal place of business in the commercial agent's licence application, or another place notified to the chief executive in the approved form. For a commercial agent who is an employed licensee, the registered office is the place specified by the employee in the employee's licence application, as the employee's business address, or another place notified to the chief executive in the approved form.

Clause 351 requires commercial agent who is a principal licensee to notify the chief executive in the approved form, within 14 days, of any change in the commercial agent's registered office, the closing of any place where the commercial agent carries on business and the opening of any new place of business.

An employed licensee must notify the chief executive in the approved form, within 14 days, of any change in the employed licensee's registered office.

Clause 352 requires a commercial agent who is a principal licensee to display the commercial agent's name and any prescribed particulars at each place the commercial agent carries on business. If the commercial agent publishes an advertisement about the commercial agent's business in a newspaper, or elsewhere, the advertisement is required to include all the particulars that are prescribed under a regulation.

Clause 353 requires a commercial agent who is a principal licensee to keep an employment register at the commercial agent's registered office. The commercial agent must enter in the register the name and other prescribed particulars of every person who is employed as a commercial agent or subagent by the commercial agent. The commercial agent must also enter, for each commercial subagent, the activities the employee is authorised to perform for the commercial agent.

The particulars and authorised activities must be entered immediately the employee is employed and any change that happens during the employment must be immediately entered. A regulation may prescribe the form of the register.

PART 4—OFFENCES

Clause 354 prohibits a person from acting as an agent for someone else for reward in performing an activity that may be done only under the authority of a commercial agent's licence unless the person holds a licence and the performance of the activity is authorised under the licence or unless the person is otherwise permitted under this Act or another Act to perform the activity.

A person must not act as a commercial agent unless the person holds a licence and is authorised under the licence to act or unless the person is otherwise permitted under this Act or another Act to act. A person "acts" as a commercial agent if the person performs any activity that a commercial agent's licence authorises, or advertises, notifies or states that the person performs or is willing to perform any of those activities, or holds out as being ready to perform any of those activities.

However, a person is not to be taken as acting as a commercial agent merely because the person makes telephone requests for payment of debts as a supervised employee of a commercial agent.

If a lawyer, in the course of the lawyer's practice, collects debts, the lawyer is not taken to have acted as a commercial agent if the lawyer complies with the requirements of the *Trust Accounts Act 1973*.

Clause 355 prohibits a person from holding out that the person is a commercial subagent unless the person holds a registration certificate as a commercial subagent.

A person is not to be taken as acting as a commercial subagent merely because the person makes telephone requests for payment of debts as a supervised employee of a commercial agent.

Clause 356 prohibits a commercial agent from accepting an appointment to act for another person if the agent is appointed to perform the activity for a person in relation to the other person. However, this prohibition does not apply if a commercial agent acts for more than 1 party in relation to a debt agreement under part IX of the *Bankruptcy Act 1966* (Cwlth).

Clause 357 requires a commercial agent, if asked by a person with whom the agent is dealing, to produce the agent's licence for the person's inspection.

Clause 358 prohibits a commercial agent from employing, as a commercial subagent, a person the agent knows, or ought to know, does not hold a registration certificate as a subagent.

A principal licensee who is an individual is not permitted to employ as a commercial subagent, himself or herself, or another individual with whom the principal licensee carries on business as a commercial agent.

A principal licensee that is a corporation is not permitted to employ as a commercial subagent an executive officer of the corporation.

Clause 359 prohibits a commercial agent or subagent from representing that the person's licence or registration certificate entitles the person to exercise a power the person may not lawfully exercise, or to use the licence or registration certificate to exercise a power the person may not lawfully exercise.

Clause 360 prohibits a commercial agent or subagent from entering premises without lawful authority.

Clause 361 prohibits a commercial agent or subagent from inducing a person to enter into an arrangement for the payment of a debt by any false or misleading representation.

Clause 362 prohibits a creditor from impersonating a commercial agent by using a name, description, document or device intended to make a person believe that the person is not dealing directly with the creditor.

A commercial agent is prohibited from giving anything to another person to enable that person to make a third person believe that the third person is not dealing directly with the creditor but with someone acting on the creditor's behalf.

CHAPTER 11—RESIDENTIAL PROPERTY SALES

PART 1—PRELIMINARY

Clause 363 provides that the purposes of this part are to give persons who enter into relevant contracts a cooling-off period and to require all contracts for the sale of residential land in Queensland to include consumer protection information, including a statement about whether the contract is subject to a cooling-off period.

Clause 364 provides definitions for the chapter. “Cooling-off period” is defined as a period of 5 business days starting on the day the buyer is bound under a contract, or if the buyer is bound on a day other than a business day, the first business day after the buyer is bound by the contract, and ending at 5 p.m. on the fifth business day. “Relevant contract” is defined as a contract to buy residential property in Queensland that arises out of an unsolicited invitation to the buyer to attend a property information session.

Clause 365 states that a buyer is bound under a contract to buy residential property that arises out of an unsolicited invitation to attend a property information session (a relevant contract) only when the buyer has received a copy of the contract signed by the buyer and the seller, and a signed, dated notice in the approved form declaring the date on which the seller signed the contract.

PART 2—WARNING STATEMENTS

Clause 366 requires a contract for the sale of residential property in Queensland to have attached, as its first or top sheet, a warning statement in the approved form.

If a seller or a person acting for the seller prepares a contract for the sale of residential property without the warning statement attached as required, that person commits an offence.

The warning statement for a contract to buy residential property that arises out of an unsolicited invitation to attend a property information session is required to state the following particulars—

- the contract is subject to a cooling-off period;
- when the cooling-off period starts and ends;
- a recommendation that the buyer seek independent legal advice about the contract before the cooling-off period ends;
- what will happen if the buyer terminates the contract before the cooling-off period ends;
- the amount or percentage of the purchase price that will not be refunded from the deposit if the contract is terminated before the cooling-off period ends;
- if the seller under the contract is a property developer, that a person who suffers financial loss because of the person's dealings with the property developer or the property developer's employees is not entitled to make a claim against the fund.

The warning statement for all other contracts for the sale of residential property is required to state that—

- the contract is not subject to a cooling-off period;
- a recommendation that the buyer seek independent legal advice about the contract before signing it; and
- if the seller under the contract is a property developer, that a person who suffers financial loss because of the person's dealings with the property developer or the property developer's employees is not entitled to make a claim against the fund.

A warning statement of either kind will be of no effect unless, before the contract is signed by the buyer, the statement is signed and dated before a witness by the seller or someone acting for the seller and the buyer.

A warning statement on which the words of the statement are not presented in substantially the same way as the words on the approved form of the statement will be of no effect. For example, if the words on the approved form are in a particular size and style of font, the words on the statement must be in the same size and style.

Clause 367 provides that if a contract, which must have a warning statement attached, does not have a statement attached or if the attached statement is of no effect because it does not comply with requirements under section 366, the person responsible for ensuring the statement is correctly attached and complies is liable for an offence. Under these circumstances, a buyer is entitled to terminate the contract at any time before the contract settles, by giving the seller or seller's agent a signed, dated termination notice. If a contract is terminated, the seller is required to refund any deposit to the buyer within 14 days, and is liable for the reasonable legal and other expenses incurred by the buyer after the buyer signed the contract. If more than 1 person is liable to reimburse the buyer, the liability of the persons is joint and several. An amount payable to the buyer is recoverable as a debt.

PART 3—COOLING-OFF PERIOD

Clause 368 provides that a buyer under a contract with a cooling-off period who has not waived the cooling-off, may terminate the contract at any time before the cooling-off period ends by giving a signed, dated termination notice to the seller or seller's agent.

Within 14 days after the contract is terminated, the seller must refund any deposit paid by the buyer under the contract, less the amount of termination penalty. A buyer may recover the amount repayable by the seller as a debt.

Clause 369 permits a buyer to waive the cooling-off period by giving the seller or the seller's agent a lawyer's certificate in the approved form before the buyer is bound by the contract.

The lawyer's certificate is required to be signed and dated by the lawyer and must certify that—

- the lawyer is independent of the seller and the seller's agent and has no business, family or other relationship with the seller or the seller's agent; and
- the lawyer has explained to the buyer the effect of the contract, the purpose of the certificate and the legal effect of the buyer giving the certificate to the seller or the seller's agent.

Clause 370 permits a buyer to shorten the cooling-off period by giving the seller or the seller's agent a lawyer's certificate in the approved form.

The lawyer's certificate is required to be signed and dated by the lawyer and must certify that—

- the lawyer is independent of the seller and the seller's agent and has no business, family or other relationship with the seller or the seller's agent; and
- the lawyer has explained to the buyer the effect of the contract, the purpose of the certificate and the legal effect of the buyer giving the certificate to the seller or the seller's agent.

The effect of the lawyer's certificate is to shorten the cooling-off period to 5 p.m. (or the time specified) on the day stated in the certificate.

PART 4—ACCOUNTING REQUIREMENTS FOR RELEVANT CONTRACTS

Clause 371 provides that this part applies to property developers if a relevant contract requires the buyer to make a part payment and the buyer is not yet entitled under the contract to receive a registrable instrument of transfer in exchange for the part payment. If a part payment is received by a real estate agent in relation to a relevant contract, Chapter 12, part 1 (Trust accounts) will govern how the payment must be dealt with.

Clause 372 requires the part payment to be paid directly to the public trustee, a solicitor entitled to practice in Queensland, a firm of solicitors practising in Queensland or a real estate agent on the day that the payment is made, or if that is not a business day, on the first business day after the payment is made.

A real estate agent, property developer or property developer director who fails to comply commits an offence.

A person can not contract out of the requirements for the way in which a part payment must be treated. If a relevant contract contains provisions for a part payment to be treated in a different way, the provisions are void. If an instrument made in connection with a relevant contract contains provisions for a part payment to be treated in a different way, the provisions are void.

Clause 373 requires a part payment to be held in trust in a trust account kept for this Act. The part payment must be dealt with by the public trustee, individual solicitor or real estate agent, or the firm of solicitors in accordance with the law governing the operation of the particular trust account.

CHAPTER 12—ACCOUNTS AND FUNDS

PART 1—TRUST ACCOUNTS

Division 1—Application of part 1

Clause 374 provides that the trust account provisions apply only to principal licensees, other than principal licensees who are property developers.

Division 2—Opening trust accounts

Clause 375 requires a principal licensee intending to open a general or special trust account to notify the chief executive in writing of the intention to open the account, specifying whether the account is to be a general trust account or a special trust account, and the name and address of the office or branch of an approved financial institution where the licensee proposes to open the account. The chief executive is to give the licensee a written acknowledgment of the licensee's notice, which the licensee must give to the person in charge of the relevant office or branch of the financial institution.

Clause 376 requires the licensee to ensure that the name of the trust account the licensee opens includes the words “general trust account” or “special trust account” as appropriate.

Clause 377 requires a licensee to immediately notify the chief executive in writing if the licensee opens a trust account, or changes the name of a trust account, or closes a trust account.

The written notification must include the following details—

- the name of the relevant financial institution;
- the account name;
- the identifying number of the financial institution; and
- the trust account number.

Division 3—Dealing with trust money

Subdivision 1—Payments to trust accounts

Clause 378 provides that the sections 379 and 380 apply if the licensee receives an amount for a transaction or with a written direction for its use, for example in the licensee’s form of appointment.

Clause 379 requires a licensee, immediately upon receiving a relevant amount, to pay it to the licensee’s general trust account, or if the licensee is directed to invest the amount, to pay it into a special trust account.

Clause 380 provides for the circumstances when a licensee must invest a relevant amount instead of paying it into a general trust account. If the licensee receives the amount for a sale, and the sale is to be completed on a day stated in the contract, or on a day ascertainable on the day the contract was entered into, that is not more than 60 days after the amount is received, and all the parties to the sale direct, the licensee must pay the amount into a special trust account in accordance with the direction.

Clause 381 prohibits a licensee from paying any amount into a trust account other than an amount required by the subdivision. However, if a licensee receives an amount that consists of an indivisible amount of trust money and non-trust money, the licensee is permitted to pay it into the licensee's general trust account as long as the non-trust money is drawn from the account within 14 days of becoming available for drawing.

Clause 382 provides that a licensee who holds more than 1 category of licence is not required to keep a general trust account for each one.

Clause 383 protects trust account money by providing that an amount paid, or required to be paid, to a trust account cannot be used by the licensee to pay a debt to a licensee's creditor, and cannot be attached or taken in execution under a court order or process by a licensee's creditor.

Subdivision 2—Payments from trust accounts

Clause 384 requires an amount paid to a trust account to be kept in the account until it is paid out in accordance with the Act and in a way permitted by the Act.

Clause 385 provides for the circumstances and way in which a licensee is permitted to draw a transaction fee or transaction expenses in relation to a particular transaction from a trust account.

Subdivision 3—Other trust account obligations

Clause 386 sets out a licensee's obligation to account to clients for all amounts received by the licensee in relation to a transaction, including the source and amount of any rebate, discount or commission the licensee received for any expenses the licensee was authorised to incur by the client or for referring the client to someone else for services in connection with the transaction.

A licensee is required to give a client an account covering all the specified details within 14 days of receiving the client's written request for an account, or if no request is received, within 42 days after the relevant transaction has been finalised.

Division 4—Disputes about trust money

Clause 387 provides that the division applies if a licensee is holding transaction funds in a trust account, and, before the transaction fund is paid out in accordance with the Act, the licensee receives written notice from a party to the transaction that ownership of the fund, or part of it, is in dispute.

Clause 388 prohibits a licensee from paying out an amount in dispute unless the licensee receives written notice from all parties that the dispute has been resolved or that legal proceedings have begun to determine the ownership of the amount. If the licensee does not receive notice within 30 days of being notified of the dispute, the licensee may deal with the amount under section 390.

Clause 389 provides that if the licensee receives written notice that the dispute has been resolved, the licensee must pay the disputed amount to the person the parties have directed in the notice. If the licensee receives written notice that legal proceedings have started, the licensee must pay the amount to the relevant court for the proceeding.

Clause 390 applies if the licensee has not received written notice about resolution of the dispute or the start of legal proceedings within 30 days of having received notice of the dispute. Within 7 days after the end of the 30 day period, the licensee must give all parties to the transaction notice stating either, that after 30 days the licensee will pay the disputed amount to a named person whom the licensee believes would have been entitled to receive it unless the licensee receives a notice under section 388, or that the licensee cannot decide who is entitled to the amount and the licensee will keep the amount in the trust account until a section 388 notice is received.

PART 2—AUDIT REQUIREMENTS***Division 1—Preliminary***

Clause 391 defines “auditor” for the purposes of the Act.

Division 2—Provisions about auditors

Clause 392 requires a principal licensee who is required to keep a trust account to appoint an auditor for the account.

If a licensee is unable to appoint an auditor, the chief executive, if requested by the licensee, may approve a person as an auditor.

Clause 393 provides for the application process to be followed by a person who wishes to be an approved auditor for a particular licensee.

Clause 394 provides for the chief executive's approval process for applications to be an approved auditor. If the chief executive refuses an application, the person must be given an information notice giving reasons for the decision and informing the person of the person's right to apply to the tribunal for a review of the decision.

Clause 395 provides for the time when an approval of a person as an approved auditor ends.

Clause 396 requires a licensee who appoints an auditor to notify the chief executive in writing within 1 month after the appointment, of the auditor's name and address and evidence that the auditor has accepted the appointment.

Clause 397 provides for the steps that must be taken by an auditor and a licensee if the auditor resigns or the licensee terminates the auditor's appointment or the notice requirements for a licensee if the auditor dies.

Clause 398 permits the chief executive to withdraw approval of an approved auditor in specified circumstances. The chief executive must give the approved auditor notice of the intention to withdraw approval and an opportunity make written submissions stating why approval should not be withdrawn. If the chief executive subsequently decides to withdraw approval, the person must be given an information notice giving reasons for the decision and informing the person of the person's right to apply to the tribunal for a review of the decision.

Clause 399 permits the chief executive to report on a matter about a qualified auditor to the Australian Securities and Investment Commission or the auditor's professional supervisory body if the chief executive believes on reasonable grounds that the auditor has not performed the auditor's functions up to generally accepted professional standards of competency, or

has failed to detect or report material irregularities in a licensee's trust accounts or has failed to properly perform an auditor's functions under the Act.

Division 3—Audit of trust accounts

Clause 400 provides the definitions for division 3.

Clause 401 requires a licensee's trust accounts to be audited for each audit period, as defined, for which the licensee carried on business as a licensee and operated a trust account. If a licensee has not operated a trust account for an audit period, the licensee need not have the trust account audited if the licensee gives the chief executive a statutory declaration that the licensee did not operate a trust account during the period.

Clause 402 sets out the time within which a licensee must have the licensee's trust accounts audited and file the auditor's signed original audit report with the chief executive.

Clause 403 provides for the functions of an auditor.

Clause 404 requires an auditor to give written notice to the chief executive immediately if the auditor cannot report that a particular trust account has been satisfactorily kept, or if the auditor finds, on an unannounced examination of a licensee's trust accounts, an irregularity that ought to be brought to the chief executive's attention.

Clause 405 permits an auditor to ask a licensee to produce the licensee's general account or information about the licensee's accounts if necessary to enable the auditor to decide whether a licensee's trust accounts have been kept satisfactorily. If the licensee refuses, the auditor must immediately report the refusal in writing to the chief executive.

Clause 406 provides that if a licensee who is required to keep trust accounts ceases to be a principal licensee, within 2 months, the licensee must have the trust accounts audited and file the auditor's signed original audit report with the chief executive.

Clause 407 provides for the matters that must be included in an auditor's audit report.

PART 3—CLAIM FUND

Clause 408 establishes a claim fund consisting of the amount standing to the credit of the fidelity guarantee fund under the repealed *Auctioneers and Agents Act 1971*, amounts payable to the fund under this Act and another amounts that may be transferred to the fund by the Treasurer from time to time. Accounts for the fund are to be kept as part of the departmental accounts of the department. The Treasurer must transfer amounts to the fund, that are appropriated from time to time, to meet claims against the fund for a particular financial year.

Clause 409 permits the fund to be used to pay the amount of all claims allowed against the fund. The Treasurer is also given power to transfer an amount from the fund to the consolidated fund.

Clause 410 permits the chief executive, on behalf of the State, to enter an agreement with a prescribed financial institution about general trust accounts kept by licensees with the financial institution, subject to the Minister's prior approval. Each agreement is required to provide for—

- payment of interest on the whole or part of the amounts held in licensees' general trust accounts to the consolidated fund;
- informing the chief executive of the amounts held in licensees' general trust accounts;
- auditing licensees' general trust accounts; and
- other matters about licensees' general trust accounts.

A financial institution is permitted to pay interest to the consolidated fund under an agreement.

**PART 4—FREEZING TRUST ACCOUNTS AND
APPOINTING RECEIVERS AND SPECIAL
INVESTIGATORS***Division 1—Definitions*

Clause 411 provides the definitions for this part.

Division 2—Freezing licensees' accounts

Clause 412 permits the chief executive to give a written direction to the holder of an account and the financial institution where the account is kept, if it appears that a licensee, the person in charge of a licensee's business at a place of business or an employee of the licensee has or may have stolen, misappropriated or misapplied trust money. The chief executive may direct that, if a claim has been made against the fund concerning the trust money, all or part of the amount standing to the credit of a stated account be paid to the chief executive, or that no money may be withdrawn from a stated account without the chief executive's approval, or that the stated account may be operated only under stated conditions.

Clause 413 requires a financial institution that has been given a written direction by the chief executive, to comply with it until it is withdrawn.

Clause 414 prohibits the holder of an account frozen by the chief executive's direction from operating the account unless the chief executive permits it.

Clause 415 permits the chief executive to operate an account subject to a direction in certain circumstances.

Clause 416 provides that the chief executive may withdraw a direction.

Division 3—Receivers***Subdivision 1—Appointment***

Clause 417 provides that, if a licensee consents to the appointment, the chief executive may appoint a receiver if the chief executive believes on reasonable grounds that a defalcation has been, or may have been committed in relation to the licensee's trust account. If the licensee does not consent, the chief executive may give written notice to the licensee, inviting the licensee, within a stated time of at least 21 days, to show why the appointment should not be made. If, after considering any written representations made by the licensee within the stated time, the chief executive considers the grounds for appointment still exist, the chief executive may make the appointment.

The chief executive may appoint a receiver immediately if the chief executive believes, on reasonable grounds, that a person is not able to obtain payment or delivery of trust property held for the person by a licensee because—

- of the licensee’s mental or physical infirmity;
- the licensee has died;
- the licensee has abandoned the business;
- the licensee has become disqualified from holding a licence;
- the licensee’s licence has been cancelled;
- the licensee has been refused renewal or restoration of the licensee’s licence; or
- the licensee’s licence has expired.

Clause 418 sets out the trust property over which a receiver may be appointed.

Clause 419 provides for the appointment only of appropriately qualified persons as receivers. A person is able to be appointed as both a receiver and a special investigator over the same trust property.

Clause 420 provides the process for appointment of a receiver. A copy of the appointment notice must be given to the receiver and the licensee. If the licensee is a corporation, the corporation is required to give notice of the receiver’s appointment to each executive officer of the corporation at the time the event giving rise to the appointment happened, unless the corporation has a reasonable excuse.

Subdivision 2—Receiver’s functions and powers

Clause 421 states the functions of a receiver.

Clause 422 gives power to a receiver to ask a person to provide information that the receiver reasonably requires about receivership property. It is a reasonable excuse for the person to refuse to give information if doing so might incriminate the person.

Clause 423 provides for the receiver to take possession of receivership property.

Clause 424 provides that if a receiver requires a person in possession of receivership property to give possession of it to the receiver and the person does not comply, the receiver may apply to a court having jurisdiction for the recovery of debts up to the amount or value of the receivership property for an order for possession of the property.

Clause 425 provides for enforcement of an order made by a court for possession of receivership property by the receiver.

Clause 426 prohibits a person from withdrawing an amount or making a payment from an account to defeat a receiver's functions, or destroying, concealing or moving receivership property or giving it to another person or placing it under another person's control.

Clause 427 provides that a receiver may deal with receivership property in the same way that a licensee may have lawfully dealt with the property.

Clause 428 prohibits a person from obstructing a receiver in the performance of the receiver's functions or the exercise of the receiver's powers.

Subdivision 3—Distributing receivership property

Clause 429 requires a receiver to give notice to persons who may have a claim against receivership property and provides how a person may make a claim.

Clause 430 requires a receiver to give a person who wishes to make a claim reasonable access, free of charge, to documents held by the receiver to assist the person to provide particulars and grounds for the claim.

Clause 431 provides for the process a receiver must adopt in deciding claims.

Clause 432 provides that a receiver may pay an allowed claim only if the receivership property is sufficient to pay all allowed claims. If the receivership property is not sufficient, the receiver—

- may pay any part of the property that consists of money to the chief executive; and
- must give the allowed claims and any documents relating to the claims to the chief executive; and

- must give a report to the chief executive stating that the property is insufficient to pay all the claims allowed by the receiver and identifying the claims that the receiver considers should be paid from the claim fund.

Money paid to the chief executive by the receiver under this provision must be paid into the claim fund and be paid from the fund to pay unsatisfied claims.

Clause 433 requires a receiver to give receivership property, in the receiver's possession, consisting of money to the chief executive if the money has not been dealt with and the chief executive asks for it.

The chief executive must pay the money to the fund and then pay the money from the fund, in the following order—

- in reimbursement of claims paid from the fund in relation to the licensee;
- to pay unsatisfied claims against the fund in relation to the licensee;
- to pay claims by the licensee against the money.

Subdivision 4—Recovery of receivers' remuneration and costs

Clause 434 provides that the licensee is liable to reimburse the chief executive for an amount paid by the chief executive for the receiver's remuneration and costs. If the licensee is a corporation, the licensee and the executive officers of the corporation at the time the event giving rise to the appointment of the receiver happened, are jointly and severally liable to reimburse the receiver's remuneration and costs. The chief executive may recover the amount liable to be reimbursed as a debt.

Subdivision 5—Ending receivership

Clause 435 states when a receiver's appointment ends.

Clause 436 sets out how receivership property must be dealt with when a receiver's appointment ends.

Clause 437 provides that a receiver must give a report to the chief executive when directed to do so, and must give a report when the receiver's appointment ends. The receiver is not entitled to be paid for the receivership until all the reports the receiver is required to give have been given to the chief executive.

Subdivision 6—Miscellaneous

Clause 438 provides that a receiver of a deceased licensee is not to be taken as the deceased's personal representative.

Clause 439 provides that receivership property cannot be levied or taken or attached under a court judgment.

Division 4—Special investigators

Clause 440 allows the chief executive, by written notice, to appoint a special investigator over a licensee's trust account if the chief executive considers that the trust account has not been kept as required by the Act. An inspector is eligible for appointment as a special investigator.

Clause 441 states the functions of a special investigator.

Clause 442 states that, for the term of the investigator's appointment, a special investigator has any or all of the powers of an inspector that the chief executive gives the investigator by signed notice.

Clause 443 requires the licensee over whose trust account the special investigator has been appointed, to comply with the investigator's lawful requests unless the licensee has a reasonable excuse. The special investigator must advise the chief executive of any failure by a licensee to comply with a request.

Clause 444 requires a special investigator to report to the chief executive as required by the chief executive. If the investigator believes that sufficient grounds exist to appoint a receiver, the investigator must immediately advise the chief executive of the grounds.

Clause 445 provides that the licensee over whose trust account the special investigator was appointed is liable to reimburse the chief executive for an amount paid by the chief executive for the special investigator's remuneration and costs. If the licensee is a corporation, the licensee and the executive officers of the corporation at the time the event giving rise to the appointment of the special investigator happened, are jointly and severally liable to reimburse the investigator's remuneration and costs. The chief executive may recover the amount liable to be reimbursed as a debt.

Clause 446 states when a special investigator's appointment ends.

CHAPTER 13—PROPERTY AGENTS AND MOTOR DEALERS TRIBUNAL

PART 1—DEFINITIONS

Clause 447 provides the definitions for this chapter.

PART 2—ESTABLISHMENT, JURISDICTION AND POWERS

Division 1—Establishment

Clause 448 establishes the Property Agents and Motor Dealers Tribunal, consisting of a chairperson and at least 6 other members.

Clause 449 provides that the tribunal has a seal which must be judicially noticed. The registrar of the tribunal is to keep custody of the seal.

Division 2—Jurisdiction and powers

Clause 450 provides that the tribunal is to have jurisdiction—

- to hear and decide disciplinary matters involving licensees and registered employees;
- to hear and decide claims, other than minor claims, against the fund;
- to review decisions of the chief executive in relation to minor claims; and
- to review decisions of the chief executive in relation to licensing and registration.

Clause 451 provides that the tribunal may do all things necessary or convenient for or in relation to exercising its jurisdiction. The powers of the tribunal are the powers conferred by the Act.

PART 3—TRIBUNAL MEMBERS

Clause 452 provides that the chairperson of the tribunal is to be appointed on a full-time basis by the Governor in Council. A person is eligible to be appointed as the chairperson only if the person is a lawyer of at least 5 years standing.

Other members of the tribunal are to be appointed on either a full-time or part-time basis by the Governor in Council. A member, other than the chairperson, is eligible to be appointed only if the person—

- is a lawyer of at least 5 years standing; or
- has experience in business in the sale, letting, exchange or marketing of property or businesses, or the sale of motor vehicles, or the finding or repossessing of goods and chattels, the collection of debts or the service of process; or
- has qualifications or experience in business or the finance industry; or
- has qualifications or experience that make the person suitable to represent community interests.

A person who is currently a licensee, or the executive officer of a corporation that is a licensee, is not eligible for appointment. This provision is made because a person who is actively in business as a licensee, or who is an executive officer of a corporation that is a licensee, may be faced with a

conflict of interest in sitting on a tribunal that is required to make decisions affecting persons who are potentially business competitors. A person who is a former licensee, or former executive officer of a corporation that is a licensee, may be qualified for appointment under one of the heads of qualification.

In recommending persons for appointment, the Minister is required to take into account the need for a balanced gender representation on the tribunal, the range and experience of the members and the need for the membership to reflect the social and cultural diversity of the general community.

The chairperson of the tribunal is permitted to hold, act in or perform the functions of another public office in addition to the office of chairperson of the tribunal.

Clause 453 provides that the term of office of a member is not longer than 7 years.

Clause 454 states that a member is entitled to be paid the remuneration and allowances decided by the Governor in Council. To the extent that a member's terms and conditions of appointment are not provided by the Act, a member holds office on the terms and conditions decided by the Governor in Council.

Clause 455 permits a member to resign by giving a signed notice to the Minister.

Clause 456 provides for termination of the appointment of a member by the Governor in Council.

Clause 457 allows the appointment of an acting chairperson by the Governor in Council.

Clause 458 states that, to ensure that the tribunal exercises its jurisdiction appropriately, the chairperson is responsible for the standards of practice and the constitution of the tribunal for hearings, the issuing of practice directions for the conduct of proceedings and the professional development and training of tribunal members.

PART 4—REGISTRAR AND OTHER STAFF

Clause 459 provides for a registrar of the tribunal.

Clause 460 sets out the functions and powers of the registrar.

Clause 461 permits the chairperson of the tribunal to give a direction to the registrar as long as the direction would not be inconsistent with the powers given to the registrar under the Act.

Clause 462 permits the registrar to engage persons as consultants to perform services for the tribunal.

Clause 463 allows the chief executive to appoint an appropriately qualified person as the registrar.

Clause 464 permits the registrar to delegate the registrar's powers under this Act to an appropriately qualified member of the staff of the tribunal.

Clause 465 provides that the registrar and staff of the tribunal are to be appointed under the *Public Service Act 1996*. The registrar may hold, act in or perform the functions of another public service office in addition to the office of registrar under this Act.

PART 5—GENERAL

Clause 466 provides that, in performing the duties of a member, a member of the tribunal has the same protection and immunity as a Supreme Court judge carrying out the functions of a judge. A person representing someone before the tribunal has the same protection and immunity as a barrister appearing for a party before the Supreme Court. A person appearing before the tribunal as a witness, has the same protection as a witness in a proceeding before the Supreme Court. A document produced at, or used for a hearing has the same protection it would have if produced before the Supreme Court.

Clause 467 provides that the Governor in Council may make rules regulating the practice and procedure to be followed and used in and for tribunal proceedings, providing for fees and expenses payable to witnesses and providing for service of process, notices, orders and other matters on parties and other persons.

Rules made by the Governor in Council have status as rules of court. Under section 118B of the *Supreme Court of Queensland Act 1991*, rules of court are exempt from the expiry and regulatory impact statement requirements of the *Statutory Instruments Act 1992*.

Clause 468 requires the chairperson to give the Minister an annual report not later than 30 September each year, containing a review of the tribunal's operation during the 12 months preceding the 30 June of the year of the report, and proposals for improving the tribunal's operation and forecasts of the tribunal's workload for the 12 months following the 30 June of the year of the report.

Within 14 sitting days of receiving the report, the Minister is required to have a copy of the report laid before the Parliament.

CHAPTER 14—CLAIMS AGAINST THE FUND AND OTHER PROCEEDINGS

PART 1—PRELIMINARY

Clause 469 sets out the definitions for chapter 14.

PART 2—CLAIMS AGAINST THE FUND

Division 1—Who can claim

Clause 470 provides that a claimant may make a claim against the claim fund if the claimant suffers financial loss because of—

- a contravention of specified provisions of the Act by a licensee, a licensee's employee or agent or a person carrying on business with the licensee, or a person having charge or control or apparent charge or control of a licensee's registered office or business (a relevant person);

- the failure of an auctioneer to ensure that a claimant who is a buyer of a used motor vehicle from the auctioneer gained clear title to the vehicle at the time property in the vehicle passed to the claimant, whether or not the auctioneer contravened the obligation to guarantee title;
- the failure of motor dealer to ensure that a claimant who is a buyer of a used motor vehicle from the motor dealer gained clear title to the vehicle at the time property in the vehicle passed to the claimant, whether or not the motor dealer contravened the obligation to guarantee title;
- a contravention of the *Land Sales Act 1984* by a licensee appointed by the owner of land to which that Act applies or by a relevant person employed by the licensee;
- a stealing, misappropriation or misapplication by a relevant person of property entrusted to the person as an agent for the claimant in the person's capacity as a relevant person.

A person is permitted to make a claim against the fund even if the person has made another claim for the loss against a receiver and the receiver has not considered or has refused that claim.

Clause 471 provides that a person cannot make a claim against the fund because of or arising out of the stealing, misappropriation or misapplication by a licensee of an amount that the licensee was directed to invest in a special trust fund.

The clause provides that the following persons cannot make a claim against the fund for the financial losses stated—

- a seller of livestock who has agreed with a relevant person for the sale to be conducted under a del credere accounting system;
- a relevant person who suffers financial loss in the course of performing an activity or carrying on business as a relevant person;
- a person holding a licence under a corresponding law, that is similar to a licence under this Act, who suffers financial loss in the course of performing an activity or carrying on business under the licence;

- a financier of a motor dealer's business who suffers financial loss because of financing the motor dealer's business;
- a person who suffers financial loss because the person guaranteed a motor dealer's obligations under a financial arrangement made by the motor dealer;
- a person who suffers financial loss because of a failure to disclose or make effective disclosure under section 138 or 268;
- a person who suffers financial loss because of, or arising out of, the person's dealings with a property developer or a property developer's employees.

Division 2—Making and dealing with claims

Clause 472 sets the time limits for making a claim against the fund. However, the tribunal has jurisdiction, on an application by a claimant whose claim is out of time, to extend the time within which a claim must be made.

Clause 473 provides that a claim must be made to the chief executive in the approved form, stating—

- the event alleged to give rise to the claim;
- when the event happened;
- if the claimant was not immediately aware of suffering financial loss because of the event, when the claimant became aware of the loss;
- all the relevant particulars about the event and the financial loss; and
- the estimated financial loss suffered.

A claim is taken to have been made on the day it is given to the chief executive, even if the claimant has not been able to state all the particulars at that time.

If the claim is not made within the allowed time limit, the chief executive is required to give the claimant a notice in the approved form advising the claimant that claim is out of time and that the claimant may apply to the tribunal within 14 days for an extension of time.

A claim given to the chief executive by a receiver is taken to have been made within the time allowed.

Clause 474 requires the chief executive to give notice of the claim and a copy of the claim to the person (the respondent) whose actions are alleged to have given rise to the claim. However, this provision does not apply to a claim given to the chief executive by a receiver.

The respondent has 14 days after receiving notice of the claim to give the chief executive any relevant information.

The respondent may attempt to settle the claim with the claimant, and if the claim is settled, the respondent must immediately advise the chief executive in writing and provide evidence of the settlement. If the chief executive is satisfied that the claim has settled, the claim may be treated as having been withdrawn.

Clause 475 requires a respondent that is a corporation, within 14 days of receiving a claim notice, to give written notice of the claim to each person who was an executive officer of the corporation at the time of the event giving rise to the claim, unless the corporation has a reasonable excuse. An executive officer who is required to be notified by the corporation, is taken to be a respondent to the claim.

The respondent corporation is taken to have complied with the requirement to give notice if the notice has been sent to the executive officer's residential or business address last known to the corporation.

Within 21 days after receiving the claim notice from the chief executive, the respondent corporation must give written notice to the chief executive of the name and last known residential and business address of each person who was an executive officer of the corporation at the time of the event giving rise to the claim, a copy of each notice given to an executive officer and information about when the notice was given, unless the corporation has a reasonable excuse.

Clause 476 provides that if a claim has not settled within 28 days after the claim notice is received by the respondent, the claimant may apply to the chief executive in the approved form to have the claim decided by the chief executive if it is a minor claim, or to have the claim referred to the tribunal for a decision.

Clause 477 provides that if a claim has not settled, the chief executive may direct an inspector to investigate the claim.

If an inspector investigates a claim, the inspector must make a report and provide a copy to the chief executive. The chief executive is to give a copy of the report to the claimant and the respondent, and if the report is about a claim to be decided by the tribunal, to the chairperson of the tribunal.

Division 3—Minor claims

Clause 478 concerns decisions about minor claims decided by the chief executive. A ‘minor claim’ is defined in the dictionary as a claim of not more than \$5 000.

The chief executive may ask the claimant and the respondent for further information or documents reasonably required to enable the claim to be decided. Regard must also be had to any inspector’s report prepared about the claim. The chief executive must give the parties a written notice inviting them to provide written comments about the report within a stated time of not less than 7 days. If comments are received from 1 or all of the parties, the chief executive must provide the other party with a copy of the comments and invite the party to provide further comments within a stated time of not less than 7 days. The chief executive must have regard to all the comments received when deciding the claim.

The chief executive is to decide a claim without a hearing.

Clause 479 permits the chief executive, at any time before deciding a claim, to amend the particulars of the claim, on the application of a party if the chief executive is satisfied the amendment is of a formal or minor nature and that no party will be unfairly prejudiced, or on the chief executive’s own initiative, if all the parties agree. On amendment, the amended claim is to be treated as the claim.

Clause 480 permits the chief executive to consider and decide a claim in the absence of any comments or submissions by a respondent, if the chief executive is satisfied that the respondent has been given notice of the claim, but has not responded to it, or that the respondent cannot be located after reasonable inquiries have been made into the respondent’s whereabouts.

Clause 481 provides that the chief executive may allow a claim or reject it, wholly or partly. The chief executive may allow a claim only if satisfied on the balance of probabilities that an event involving the respondent that is an allowable claim happened and that the claimant suffered financial loss because of the event and that the respondent is liable for the claimant’s loss.

If the claim is allowed wholly or partly, the chief executive must take into account any amount the claimant might reasonably have recovered if not for the claimant's neglect or default. In allowing a claim, the chief executive must decide the amount of the claimant's financial loss and must name the person who is liable for the loss.

The decision must be signed and dated and clearly state—

- the decision;
- the chief executive's findings in relation to the facts of the case;
- the reasons for the decision; and
- if the decision is that an amount is to be paid to the claimant from the fund—
- that the respondent named in the decision is liable to reimburse the fund to the extent of the amount paid to the claimant; and
- if more than 1 person is named as being liable, the liability of the named persons is joint and several.

Clause 482 requires the chief executive to give the parties a notice in writing of the decision, a copy of the decision and a review notice within 14 days of the decision.

The review notice is required to state—

- that a party dissatisfied with the chief executive's decision may apply to the tribunal registrar to have the decision reviewed by the tribunal within 28 days of receiving the notice;
- how to make an application for review of the decision; and
- that if no application to have the decision reviewed is made within the time allowed, the decision is binding on the parties, and if the decision is to allow the claim and authorise payment from the fund, the respondent is liable to reimburse the fund and the amount required to be reimbursed is recoverable by the chief executive as a debt.

Clause 483 entitles a party who is dissatisfied with the chief executive's decision on a minor claim to apply to the registrar within 28 days after receiving the review notice to have the decision reviewed by the tribunal. The person must apply in the approved form and include the prescribed fee. The applicant must give a copy of the application to the other party and to the chief executive.

Clause 484 provides that if no application to review the chief executive's decision is made within the time allowed, the decision is binding on the parties and an amount paid to the claimant from the fund may be enforced by the chief executive as a debt owed to the chief executive by the respondent named in the decision.

The respondent is not able to subsequently challenge the correctness of the decision or the amount payable.

Division 4—Claims other than minor claims

Clause 485 states that when a claim is referred to the tribunal, the registrar must fix a hearing date and issue an attendance notice in the approved form requiring the claimant and the respondent to attend before the tribunal.

The hearing date must be a day at least 14 days after the claim is referred to the tribunal, unless the parties agree on an earlier day.

The claimant is required to give a copy of the attendance notice to the respondent at least 7 days before the hearing day.

Clause 486 permits the tribunal, at any stage of the proceeding, to amend the particulars of the claim, on the application of a party if the tribunal is satisfied the amendment is of a formal or minor nature and that no party will be unfairly prejudiced, or on the tribunal's own initiative, if all the parties agree. On amendment, the amended claim is to be treated as the claim.

Clause 487 permits the tribunal to hear and decide a claim in the absence of a respondent, if the tribunal is satisfied that the respondent has been given an attendance notice for the hearing, but has not appeared, or that the respondent cannot be located after reasonable inquiries have been made into the respondent's whereabouts.

Clause 488 provides that the tribunal may allow a claim or reject it, wholly or partly. The tribunal may allow a claim only if satisfied on the balance of probabilities that an event involving the respondent that is an allowable claim happened and that the claimant suffered financial loss because of the event and that the respondent is liable for the claimant's loss.

If the claim is allowed wholly or partly, the tribunal must take into account any amount the claimant might reasonably have recovered if not for the claimant's neglect or default. In allowing a claim, the tribunal must decide the amount of the claimant's financial loss and must name the person who is liable for the loss.

Division 5—Payment of claims and liability of persons for payments from the fund

Clause 489 provides that if a minor claim is allowed by the chief executive or a claim, other than a minor claim, is allowed by the tribunal, the chief executive is to authorise payment of the claim from the fund.

A payment from the fund for a minor claim must not be made until the end of the period allowed for review, and if a review application is made, until the review and any appeal is finally decided. For claims decided by the tribunal, the payment must not be made until the end of the period allowed for an appeal, and if an appeal is made, until the appeal is finally decided.

A payment from the fund is taken to be in full settlement of the claim against the fund.

Clause 490 provides that when an amount for a claim is paid from the fund, the person named in the claim decision as being liable for the claimant's loss is liable to reimburse the fund to the extent of the amount paid to the claimant. If more than 1 person is named as being liable, the liability of the persons named is joint and several

Clause 491 provides that upon payment of an amount from the fund, the chief executive must give a letter of demand to the person or persons named as being liable to reimburse the fund. The demand must require the person or persons to pay the amount within 28 days of receiving the demand.

Clause 492 provides that a claimant may not recover from the fund an amount more than the balance of the claimant's loss, after deducting from the loss the amount (including the value of all benefits) received or recovered by the claimant from a source other than the fund and the amount (including the value of all benefits) the chief executive or tribunal considers the claimant might reasonably have received or recovered if not for the claimant's neglect or default.

For a single claim, a claimant is able to recover from the fund an amount no more than prescribed by regulation.

A regulation may be made prescribing the maximum total amount that may be paid from the fund arising out of a contravention, failure to ensure clear title to a vehicle, stealing, misappropriation or misapplication by a single person. If a regulation is made, and the amount of claims against the fund is more than the amount prescribed, the total amount payable out of the fund for the claims must be distributed proportionately among the claimants whose claims are allowed.

Interest is not payable from the fund for a claim allowed against the fund.

Clause 493 requires a claimant to give the chief executive written notice of an amount or benefit, other than an amount from the fund, that the claimant receives for the claimant's financial loss, whether it is received before or after the claim is paid.

Division 6—Reimbursements to fund

Clause 494 requires the chief executive to pay to the fund any amount recovered in relation to a payment from the fund.

Clause 495 provides that if a claimant who has received a payment from the fund recovers an amount more than the claimant is entitled to receive, the claimant must reimburse the overpayment. If the claimant has recovered a thing capable of physical delivery for which the claimant has received a payment from the fund, the claimant must deliver it to the chief executive in accordance with any direction the chief executive makes, or reimburse the fund with the amount of payment the claimant has received for the thing. If the chief executive takes possession of the thing, it may be sold by the chief executive.

The chief executive may recover the overpayment or the amount the claimant received for the thing as a debt.

PART 3—DISCIPLINARY HEARINGS

Clause 496 sets out the grounds for starting disciplinary proceedings before the tribunal against a licensee or a registered employee and the ground for starting disciplinary proceedings before the tribunal against an executive officer of a corporation that is a licensee.

Clause 497 provides that a disciplinary proceeding is started by the chief executive filing a notice, stating the grounds for the charge and the nature of the matter, in the approved form with the registrar of the tribunal.

Clause 498 provides that a disciplinary proceeding starts on the day the respondent to the proceeding is given a complaint and attendance notice.

Clause 499 requires a hearing date for the proceeding to be a day at least 14 days after the proceeding starts.

Clause 500 permits the tribunal, at any stage of the proceeding, to amend the particulars of the complaint, on the application of a party if the tribunal is satisfied the amendment is of a formal or minor nature and that no party will be unfairly prejudiced, or on the tribunal's own initiative, if all the parties agree. On amendment, the amended complaint is to be treated as the complaint.

PART 4—REVIEW PROCEEDINGS

Clause 501 entitles a person who is dissatisfied with a decision of the chief executive made under a provision specified in schedule 1 to apply to have the decision reviewed by the tribunal.

Clause 502 sets out the procedure for starting a review proceeding.

Clause 503 permits the tribunal, at any stage of the proceeding, to amend the particulars of the application for review, on the application of a party if the tribunal is satisfied the amendment is of a formal or minor nature and that no party will be unfairly prejudiced, or on the tribunal's own initiative, if all the parties agree. On amendment, the amended application is to be treated as the application for review.

Clause 504 requires the tribunal to convene a hearing to consider the application. However, if the application is to review a decision on a minor claim, the tribunal may review the decision in any way it considers appropriate, including reconsidering the material before the chief executive or convening a hearing to consider the claim afresh.

Clause 505 provides that when a relevant decision of the chief executive is under review by the tribunal, the effect of the decision is stayed for the purpose of securing the effectiveness of the review proceeding. However, a decision to immediately suspend a licence or employee registration, or to freeze a licensee's accounts under section 412 is not stayed.

The period of the stay lasts only until the tribunal decides the review application.

PART 5—PROCEEDINGS GENERALLY

Division 1—Constitution of tribunal

Clause 506 provides for the constitution of the tribunal by 3 members for a hearing. However, the tribunal may be constituted by the chairperson sitting alone, for conducting a preliminary hearing, reviewing a decision of the chief executive on a minor claim, considering an application for a summary order, deciding a claim, other than a minor claim, of not more than \$10 000, considering an application for an extension of time, or considering an application for joinder.

Division 2—Disclosure of interests

Clause 507 requires a member to disclose an issue giving rise to a conflict of interest if the member becomes aware that a conflict in relation to a proceeding in the tribunal exists. Following the disclosure, the member may disqualify himself or herself. However, the member may take part in the proceedings if, in the case of the chairperson, the parties agree, or otherwise, if the chairperson and the parties agree.

A conflict of interest in relation to a hearing is defined as—

- the member having a direct or indirect interest in the subject matter of the proceeding that may prevent the member from acting impartially;
- the member being reasonably perceived as having a direct or indirect interest in the subject matter of the proceeding that may prevent the member from acting impartially;
- the member constituting or having constituted the tribunal for a related hearing or is or was a member of the tribunal constituted for a related hearing.

A “related hearing” is defined as a hearing dealing with the same issues or parties as another hearing.

Division 3—Management of proceedings

Clause 508 provides that the procedure of a proceeding is at the discretion of the tribunal, subject to the requirements of the Act and the rules of natural justice. The tribunal is not subject to the rules of evidence and may inform itself in any way it considers appropriate. The tribunal is given power to conduct proceedings by means of telephone conferencing, video conferencing or another form of communication that allows reasonably contemporaneous and continuous communication between the persons taking part in the proceeding.

Clause 509 allows the tribunal to make orders, give directions and do whatever is necessary for the expeditious, just, fair and cost effective resolution of a proceeding.

Clause 510 provides for the application process for an applicant applying to the tribunal for an extension of time to file a claim or apply for a review decision.

Clause 511 gives jurisdiction to the tribunal to extend the time within which an applicant may file a claim or seek review of a decision of the chief executive. The time may be extended if the tribunal is satisfied—

- that the application for an extension is made within the allowed time; and

- the extension is appropriate having regard to—
 - the reasons of the applicant for not making the claim or seeking the review within the allowed time limit; and
 - the application generally; and
 - for a claim, the relative hardships that an extension of time or a refusal to extend time would place on the claimant or the respondent; and
 - the justice of the matter generally.

There is no appeal against the decision of the tribunal on an application to extend time.

Clause 512 provides for the jurisdiction of the tribunal to order that a person be joined as a party to a proceeding.

Clause 513 concerns the issue of attendance notices by the tribunal to require a person to appear before the tribunal at a stated time and place to give evidence or to produce a stated document or thing.

An attendance notice must be served personally on the person named in the notice. The person must not, without reasonable excuse, fail to attend as required or fail to continue to attend as required by the presiding member of the hearing until excused from attendance.

Clause 514 provides that the chairperson must select the members of the tribunal for a hearing, 1 of whom must always be a lawyer. The lawyer member selected may be the chairperson.

For every hearing, the lawyer member selected is the presiding member.

The registrar is required to keep a record of the names of members constituting the tribunal for a hearing and the purpose for which the hearing was held.

Clause 515 provides that the tribunal may conduct a preliminary hearing at the request of a party to the proceeding, or on its own initiative.

Clause 516 gives power to the tribunal to dismiss a claim or an application for review if it is satisfied that the claim or review application is frivolous, vexatious or oppressive.

Clause 517 states that the tribunal may sit at the times and places decided by the chairperson.

Division 4—Representation

Clause 518 provides for the persons who are entitled to appear before the tribunal at a hearing.

Division 5—Other provisions about proceedings

Clause 519 provides for the powers of the tribunal to take evidence.

Clause 520 allows for the inspection of documents or things produced to the tribunal at a hearing.

Clause 521 permits the tribunal to refer matters of a technical nature arising in the course of a hearing for investigation by an expert.

Clause 522 provides for adjournment of hearings.

Clause 523 provides that a question of law arising in a proceeding is to be decided by the presiding member.

Clause 524 sets out the circumstances under which a person will be in contempt of the tribunal.

Clause 525 provides for the way in which a person's contempt of the tribunal may be punished.

Clause 526 provides that if a person's conduct is both in contempt of the tribunal and an offence, the person may be proceeded against for one of the consequences of the conduct, but is not liable to be punished twice for the same conduct.

Division 6—Applications for summary orders

Clause 527 provides that the chief executive may apply to the tribunal in the approved form for a summary order that a respondent to a claim reimburse the fund in a stated amount in satisfaction of a claim that has been paid from the fund.

The application must be accompanied by a copy of the claim, copies of the chief executive's written notice of the decision, the decision and the review notice, a copy of the letter of demand sent to the respondent and a statutory declaration by the chief executive stating the amount paid from the fund in settlement of the claim and the amount of any payment received from the respondent in satisfaction of the claim.

Clause 528 requires the registrar to fix a date for the tribunal to consider the application, to provide the respondent with information and copies of the application material and to advise the respondent that the respondent may make written submissions to the tribunal about when and how the respondent intends to satisfy the amount outstanding.

Division 7—Tribunal's orders

Clause 529 provides that the tribunal may make 1 or more of the specified orders against a person the tribunal finds guilty of a disciplinary charge, including ordering the person to pay a fine of not more than 200 penalty units (\$15 000).

The tribunal may not make an order disqualifying a person from holding a licence if the tribunal is satisfied that a court, in relation to proceedings for an offence against the Act, has declined to make an order disqualifying the person from holding a licence.

Clause 530 provides for the orders that the tribunal may make in relation to a claim against the fund.

Clause 531 provides for the orders that the tribunal may make on an application for review of a decision of the chief executive, including substituting another decision for the chief executive's decision. If the tribunal substitutes another decision, the decision is taken to be a decision of the chief executive.

Clause 532 provides that the tribunal must make a summary order if satisfied that—

- the chief executive has made a decision about a claim against the fund; and
- under the decision, the respondent is liable to reimburse the fund in a stated amount; and

- written notice of the decision, a copy of the decision and a review notice were sent to the respondent; and
- the respondent did not apply for review of the chief executive's decision; and
- a letter of demand was sent to the respondent; and
- the respondent did not pay the stated amount within the time allowed under the letter of demand.

A summary order of the tribunal must state that the respondent is liable to pay to the chief executive a stated amount within a stated period.

Clause 533 prescribes the form of an order of the tribunal. An order, other than a summary order, must state the tribunal's findings on the facts of the case.

Clause 534 requires the tribunal to support an order, other than a summary order, with written reasons for its decision.

Clause 535 requires the registrar to give a copy of a tribunal order to each of the parties to the proceeding.

Clause 536 allows the tribunal to publish its decisions in any way it considers appropriate.

Division 8—Costs

Clause 537 provides that each of the parties to a hearing is to bear the party's own costs.

Division 9—Recovery of amounts

Clause 538 provides that an order of the tribunal requiring a person to pay a fine to the chief executive may be filed in the registry of the court having jurisdiction for recovery of debts up to the amount of the fine, and on being filed, is taken as an order of that court and may be enforced against the person as a penalty imposed by that court.

Clause 539 provides that an order of the tribunal requiring a person to pay an amount other than a fine may be filed in the registry of the court having jurisdiction for recovery of debts up to the amount of the fine, and on being filed, is taken as an order of that court and may be enforced by the chief executive against the person as a debt. If more than 1 person is named as being liable, the persons are jointly and severally liable.

Division 10—Appeal

Clause 540 provides that a decision of the tribunal may be appealed to the District Court, but only on a question of law.

CHAPTER 15—ENFORCEMENT

PART 1—INSPECTORS

Clause 541 provides that the chief executive is an inspector, and may appoint inspectors for the purposes of the Act.

Clause 542 provides that an inspector's powers may be limited under a regulation, under a condition of appointment or by the chief executive's written notice.

Clause 543 sets out the conditions of appointment for an inspector.

Clause 544 requires the chief executive to give each inspector an identity card that contains a recent photograph of the appointee, the signature of the inspector, a statement identifying the person as an inspector, and the expiry date of the appointment. The identity card may be issued as a single card to a person who is appointed as an inspector under this Act and other Acts.

Clause 545 requires a person who ceases to be an inspector to return the identity card to the chief executive, at the latest, 21 days after the person is no longer an inspector, unless the person has a reasonable excuse for failing to comply.

Clause 546 requires an inspector to produce the inspector's identity card or have the identity card clearly displayed for anyone to see, before the inspector exercises any power given to an inspector under the Act. If it is not practicable for the inspector to produce the card for a person's inspection before exercising the power, the inspector must produce it at the first reasonable opportunity.

PART 2—INSPECTORS' POWERS

Division 1—Entry to places

Clause 547 permits an inspector to enter a place—

- with the consent of the occupier; or
- if it is a public place, when the place is open to the public; or
- under a warrant authorising entry; or
- if it is a licensee's place of business and the place is—
 - open for carrying on business; or
 - otherwise open for entry; or
 - required to be open for inspection under, or as a condition of, the licensee's licence.

In order to ask an occupier for consent to enter, an inspector, without consent or a warrant, may enter land around premises to an extent that is reasonable to contact the occupier, or enter part of the place the inspector reasonably considers members of the public are allowed to enter when they wish to contact the occupier.

Division 2—Procedure for entry

Clause 548 sets out the procedure that an inspector must follow to ask an occupier for consent to enter the occupier's place.

If the occupier consents to entry, the inspector may ask the occupier to sign an acknowledgment of the consent that contains the following particulars—

- a statement that the occupier has been told the purpose of the entry and that the occupier is not required to consent;
- the purpose of the entry;
- a statement that the occupier gives consent to the inspector to enter and exercise the inspector's powers; and
- the time and date that consent was given.

When the occupier signs the acknowledgment, the inspector must immediately give the occupier a copy.

In a proceeding in court when an issue arises as to whether an occupier consented to the entry of an inspector, and there is no acknowledgment in evidence that the occupier consented and it is not otherwise proved by the person relying on the lawfulness of the entry that the occupier consented, the court is to find that the occupier did not consent to the entry.

Clause 549 sets out the procedure for an inspector to apply for a warrant to enter a place.

Clause 550 provides for the basis upon which a magistrate may issue a warrant and the matters that must be stated in a warrant.

Clause 551 sets out the procedure for an inspector to apply by phone, fax, radio or another form of communication for a special warrant to enter a place. The application may be made only if the inspector considers it is necessary because of urgent circumstances or other special circumstances such as the inspector's remote location.

Clause 552 provides for the procedure to be followed by an inspector before entering a place under a warrant.

Division 3—Powers after entry

Clause 553 provides for the powers an inspector may exercise if the inspector enters a place under a warrant.

Clause 554 provides for the procedure to be followed by an inspector when an inspector seizes a thing at the place the inspector has entered.

Clause 555 gives power to an inspector to require a person to state the person's name and address, unless the person has a reasonable excuse, if the inspector—

- finds the person committing an offence against the Act; or
- finds the person in circumstances that lead the inspector to reasonably suspect that the person has committed or assisted in the commission of an offence under the Act; or
- has information that leads the inspector to reasonably suspect that the person has committed or assisted in the commission of an offence under the Act.

Clause 556 gives power to an inspector to require a person to produce documents, unless the person has a reasonable excuse.

Clause 557 gives power to an inspector to require a person to give information, unless the person has a reasonable excuse, if the inspector believes on reasonable grounds that an offence against the Act has been committed and the person may be able to give information about the offence.

PART 3—OTHER PROVISIONS ABOUT ENFORCEMENT

Clause 558 sets out the duties of managers of financial institutions where trust money has been deposited under the Act to—

- allow an inspector, on the inspector's signed written demand, to inspect and copy any documents relating to a relevant account;
- inform the chief executive immediately a licensee's trust account is overdrawn;
- inform the chief executive immediately there is insufficient money in a licensee's trust account to meet a cheque drawn on the account, of the amount of the cheque and the amount in the account.

Clause 559 provides for the procedure that must be followed if an inspector in the course of exercising the inspector's powers, or a person acting under the direction or authority of an inspector, damages property.

Clause 560 entitles a person to claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of an inspector's powers.

Clause 561 provides that a person must not threaten or obstruct an inspector exercising a power under the Act without reasonable excuse.

Clause 562 prohibits a person from pretending to be an inspector.

CHAPTER 16—INJUNCTIONS AND UNDERTAKINGS

PART 1—INJUNCTIONS

Clause 563 permits an injunction to be granted by the District Court against a person under this part.

Clause 564 permits an application for an injunction to be made by the chief executive or by a person aggrieved by the respondent's conduct.

Clause 565 provides that the District Court may grant an injunction if it is satisfied that the respondent has engaged in, or is proposing to engage in, conduct that constitutes, or would constitute—

- a contravention of the Act or a code of conduct;
- attempting to contravene the Act or a code of conduct;
- aiding, abetting, counselling or procuring a person to contravene the Act or a code of conduct;
- inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the Act or a code of conduct;
- being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the Act or a code of conduct; or
- conspiring with others to contravene the Act or a code of conduct.

Clause 566 provides that the District Court may exercise the power to grant an injunction to restrain a respondent from engaging in conduct whether or not it appears to the court that the person intends to engage again, or to continue to engage in, the conduct that has given grounds for the grant of an injunction, and whether or not the respondent has previously engaged

in that kind of conduct. The court may exercise the power to grant an injunction requiring a respondent to do something whether or not it appears to the court that the person intends to fail again, or continue to fail, to do the act or thing that has given grounds for the grant of an injunction, and whether or not the respondent has previously failed to do the act or thing. The court may grant an interim injunction until an injunction application is finally decided.

Clause 567 provides that the District Court may grant an injunction in the terms the court considers appropriate, including restraining a respondent from carrying on business as a licensee for a stated period or except in accordance with stated terms and conditions, or requiring a respondent to take specified action, such as disclosing or publishing information to remedy adverse consequences caused by the respondent's contravention.

Clause 568 states that when the chief executive applies for an injunction, no undertaking as to damages or costs may be required or made.

PART 2—UNDERTAKINGS

Clause 569 gives power to the chief executive, if the chief executive believes on reasonable grounds that a person has contravened, or has been involved with contravening, the Act or a code of conduct, to issue the person with a written notice that—

- states the act or omission constituting the believed contravention; and
- asks the person to give a written undertaking not to continue or not to repeat the act or omission.

If the person gives the undertaking, and the chief executive accepts it, offence proceedings for the contravention may not be started against the person unless the chief executive withdraws the undertaking.

Clause 570 provides that an undertaking may be varied or withdrawn by the person who gave the undertaking, with the chief executive's approval. The chief executive may vary or withdraw an undertaking, if the chief executive believes, on reasonable grounds, that—

- before the undertaking was accepted—

- the person who gave it had contravened the Act in a way the chief executive did not know about; and
- had the chief executive known about it, the chief executive would not have accepted the undertaking at all, or would not have accepted it unless its terms were changed; or
- the undertaking is no longer necessary.

Clause 571 provides for how an undertaking may be enforced by the chief executive by an application to the District Court, if the chief executive believes, on reasonable grounds, that a person bound by an undertaking has breached its terms.

Clause 572 requires the chief executive to keep a register of undertakings, which must be available for public inspection.

CHAPTER 17—GENERAL OFFENCES, EVIDENTIARY MATTERS AND LEGAL PROCEEDINGS

PART 1—GENERAL OFFENCES

Clause 573 provides that a licensee who dishonestly converts an amount that belongs to someone else, in the performance of the licensee's activities, to the licensee's own or someone else's use, or who dishonestly renders an account of the amount knowing it to be false in a material particular, commits a crime.

Clause 574 prohibits a licensee or registered employee, or a person acting as a licensee or registered employee, from representing in any way to someone anything that is false or misleading in relation to the letting, exchange or sale of real or personal property.

The prohibition extends to a false or misleading representation about—

- the value of land at the date of sale;
- the potential income from leasing of the land;

- if the land has been previously sold, the date and consideration for the sale;
- how the purchase of the land may affect the incidence of income taxation on the buyer.

Related offences about false and misleading conduct in relation to land are contained in the *Fair Trading Act 1989* and the *Trade Practices Act 1974* (Cwlth).

Clause 575 supplements the preceding clause by permitting the chief executive, if the chief executive believes on reasonable grounds that a licensee or registered employee has made a false or misleading representation, to request the person by written notice, to substantiate the representation by written proof. The person addressed in the notice must respond by the stated time unless the person has a reasonable excuse.

Clause 576 prohibits a person from wilfully representing to another person anything false or misleading about the total distance travelled by a motor vehicle.

Clause 577 prohibits tampering with a motor vehicle's odometer with intent to falsely represent that, at a particular time, the vehicle has travelled more or less than the distance shown on the odometer.

Clause 578 prohibits a licensee or a licensee's employee, unless otherwise provided in the Act, from charging a fee for providing, preparing, or completing a document for a transaction in the course of performing the licensee's activities.

Clause 579 prohibits a licensee from requesting or receiving a commission or reward for performing licensed activities in relation to a transaction that is more than an amount that is prescribed under a regulation for the performance of the activity.

Clause 580 prohibits a person from operating a licensee's trust account unless the person is the licensee, a person employed by the licensee who is authorised by the licensee to operate the account or the person is otherwise authorised by the Act to do so.

Clause 581 prohibits a licensee from lending the licensee's licence, or notifying or advertising that a licence is available for sale, loan, hire or on any other basis, to another person whether that person is licensed or not, or permitting someone else to hold out that the person is the holder of the licence issued to the licensee.

It is an offence for a person to borrow, hire or buy a licensee's licence. A person who has the effective or apparent management or control of a licensee's business who is not the holder of the appropriate licence or the licensee's substitute, is taken to have borrowed the licensee's licence, and the licensee is taken to have lent the licence to the person.

Clause 582 prohibits a person from making false or misleading statements to the chief executive, an inspector or a person in the department concerned with administration of the Act.

Clause 583 prohibits a person from giving a document containing false or misleading information to the chief executive, an inspector or a person in the department concerned with administration of the Act.

Clause 584 prohibits a person, for reward, from supplying, undertaking to supply, advertising or holding out in any way that the person will supply, addresses or other particulars about rental residential property or residential property, land or interests in residential property or land for sale unless the person is a real estate agent or pastoral house appointed by the landlord or seller, with authority from the landlord or seller to supply the particulars.

It is prohibited for a person other than a real estate agent, property developer, or someone acting for the agent or property developer, to make an unsolicited invitation to a person to attend a property information session.

PART 2—EVIDENTIARY MATTERS

Clause 585 concerns evidence that goes to evidence of odometer tampering by a motor dealer or auctioneer.

Clause 586 concerns evidence of a continuing false representation in relation to a proceeding for an offence of tampering with an odometer.

Clause 587 provides for evidentiary matters about inspectors' appointments, signatures of the chief executive, tribunal members and inspectors, and certificates signed by those persons.

Clause 588 provides that an entry in a book kept by or belonging to a licensee or found in the licensee's premises, is evidence that the entry has been made by or with the authority of the licensee.

PART 3—PROCEEDINGS

Clause 589 provides for proceedings for offences and the time limits for starting a proceeding. The maximum penalty that is able to be imposed on a summary conviction of an indictable offence (an offence for which the maximum penalty is 2 or more years imprisonment) is 200 penalty units (\$15 000) or 1 year's imprisonment.

Clause 590 provides for the responsibility of a person for the acts or omissions of a representative of the person.

Clause 591 requires executive officers of a corporation to ensure the corporation complies with the Act.

Clause 592 provides that a court may, in addition to any other penalty it might impose on a licensee for conviction for an offence under the Act, order that—

- the person's licence be suspended for a stated period; or
- the person's licence be cancelled; or
- the person be disqualified from holding a licence for a stated period or permanently.

The chief executive may apply to the court for the court to make such an additional order.

Clause 593 provides for how a charge involving a false or misleading statement, representation or entry, or false or misleading information should be stated.

CHAPTER 18—GENERAL

Clause 594 permits the Minister or the chief executive to publish public warning statements identifying particular contraventions of the Act, offences against the Act, types of business practices and conduct and persons associated with these matters if the Minister or the chief executive is satisfied that it is in the public interest to make the statement.

Clause 595 provides that nothing in the Act is intended to affect or limit any civil remedy a person may have against a licensee or other person in relation to any matter.

Clause 596 provides that nothing in the Act limits the application of the *Crimes (Confiscation) Act 1989*.

Clause 597 permits the chief executive to delegate the chief executive's powers to an appropriately qualified public service officer. However, this power of delegation does not apply to the chief executive's power to make public warning statements.

Clause 598 provides for the approval of forms for use under the Act.

Clause 599 requires the Minister to ensure that a review of the operation of the Act is started within 2 years of the commencement of this review section. Within 3 months after the review is finished, the Minister must table the review report in Parliament.

Clause 600 provides for the making of regulations by the Governor in Council.

Clause 601 provides that consequential amendments to other Acts are contained in schedule 2.

Clause 602 repeals the *Auctioneers and Agents Act 1971*.

CHAPTER 19—TRANSITIONAL AND SAVINGS

Clause 603 provides the definitions for this chapter.

Clause 604 provides the transitional arrangements for the Auctioneers and Agents Fidelity Guarantee Fund under the repealed Act.

Clause 605 provides the transitional arrangements for matters for which the Auctioneers and Agents Committee under the repealed Act was subrogated.

Clause 606 provides for the transitional arrangements for substitute licensees who were appointed under the repealed Act.

Clause 607 preserves licences in force at the commencement of the Act, and sets out the new name and category by which each existing type of licence is to be called.

Clause 608 preserves certificates of registration in force at the commencement of the Act, and sets out the new name and category by which each existing type of certificate of registration is to be called.

Clause 609 provides that an application made under the repealed Act and not decided before the commencement, is to be decided under the new Act.

Clause 610 provides that an objection made by a person under the repealed Act to an application for the grant, renewal or restoration of a licence or registration that has not been decided at the commencement, gives the objector no right to appear under this Act in support of the objection. However, the chief executive, in deciding the relevant application under the new Act, must have regard to the substance of the objection.

Clause 611 provides for the continuation of exemptions given under the repealed Act only if there is an equivalent provision under this Act providing an exemption.

Clause 612 provides that a financial institution that was an approved financial institution under the repealed Act immediately before the commencement, continues to be an approved financial institution for this Act.

Clause 613 provides for the continuation of agreements entered into by the registrar and a financial institution under the repealed Act. References in an agreement to the “registrar” are to be taken as references to the chief executive, and the agreement is to be taken as an agreement entered into by the chief executive and the relevant financial institution about the keeping of general trust accounts by licensees under this Act.

Clause 614 provides that a valid engagement or appointment to act as an auctioneer, real estate agent, commercial agent or motor dealer under the repealed Act and in force at the commencement continues to be a valid appointment under the Act.

However, if the existing appointment is for a sole or exclusive agency, the appointment will continue only until the day it ends according to its terms or 60 days after the commencement, whichever happens earlier.

Clause 615 provides that existing general and special trust accounts opened under the repealed Act are to be taken as having been opened under this Act.

Clause 616 provides for the continuation of agreements entered into by the Auctioneers and Agents Committee and another entity under the repealed Act that are still in force at the commencement. References in an agreement to the “registrar” or “committee” are to be taken as references to the chief executive, or, if the context permits, to the tribunal and the agreement is to be taken as an agreement entered into by the chief executive and the entity under this Act.

Clause 617 provides the transitional arrangements for auditors appointed under the repealed Act by a licensee, applicant or the Minister.

Clause 618 provides the transitional arrangements for receivers appointed under the repealed Act by the Auctioneers and Agents Committee and for property in the possession of a receiver at the commencement of this Act.

Clause 619 provides that a person holding an appointment as an inspector under the repealed Act at the commencement is to be taken to have been appointed under this Act.

Clause 620 provides for transitional arrangements for acts done or decisions made by the registrar or a deputy registrar under the repealed Act that may be lawfully done or made by the chief executive under this Act.

Clause 621 provides for the continuation of the application of section 76 of the repealed Act (Restriction on licensee’s remedy for commission etc.) to the engagement or appointment of a licensee for a particular transaction in force at the commencement of this Act, unless, following the commencement, the licensee and client decide otherwise.

Clause 622 provides transitional arrangements for disciplinary action begun but not completed by the Auctioneers and Agents Committee at the commencement of this Act.

Clause 623 provides transitional arrangements for appeals begun under the repealed Act but not decided at the commencement of this Act.

Clause 624 provides transitional arrangements for legal proceedings by or against the Auctioneers and Agents Committee that are not completed at the commencement of this Act.

Clause 625 allows certain property developers a period of 60 days after the commencement in which to make an application for a licence under the Act.

Clause 626 allows certain property developer salespersons a period of 60 days after the commencement in which to make an application for a registration certificate under the Act.

Clause 627 allows certain motor dealers who carry on the business of negotiating under consultancy arrangements for the purchase or sale of motor vehicles for persons, a period of 60 days after the commencement in which to make an application for a licence under the Act.

Clause 628 allows certain motor salespersons employed by motor dealers covered by section 627, a period of 60 days after the commencement in which to make an application for a registration certificate under the Act.

Clause 629 allows a reference in an Act or document to the repealed Act to be taken as a reference to this Act, if the context permits.

Clause 620 allows a reference in an Act or document to the Auctioneers and Agents Fidelity Guarantee Fund to be taken as a reference to the Claim Fund under this Act, if the context permits.

SCHEDULE 1

DECISIONS SUBJECT TO REVIEW

Schedule 1 sets out the section references to decisions of the chief executive that are subject to review by the tribunal under section 501.

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS

Schedule 2 contains consequential amendments to other Acts.

SCHEDULE 3

DICTIONARY

Schedule 3 contains the definitions of particular words used in the Act.