

Property Agents and Motor Dealers Act and Other Acts Amendment Bill 2005

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Property Agents and Motor Dealers Act and other Acts Amendment Bill 2005*.

Policy Objectives of the Legislation

The primary policy objective of the Legislation is to amend the *Property Agents and Motor Dealers Act 2000* (the Act) to address a number of issues arising from the report on the outcome of the review of the Act tabled in the Legislative Assembly on 24 November 2004; to amend the *Body Corporate and Community Management Act 1997* to complement an amendment to the Act; and to make a number of minor and technical amendments to the Act and the following Acts also administered by the Department of Tourism, Fair Trading and Wine Industry Development (the Department):

- *Business Names Act 1962*;
- *Collections Act 1966*;
- *Introduction Agents Act 2001*;
- *Land Sales Act 1984*;
- *Partnership Act 1891*;
- *Security Providers Act 1993*;
- *Second-hand Dealers and Pawnbrokers Act 2003*; and
- *Travel Agents Act 1988*.

Reasons for the Bill

The Act came into force on 1 July 2001, replacing the *Auctioneers and Agents Act 1971*. The Act's aim is to strengthen consumer protection and modernise licensing practices. The Act licenses and regulates real estate agents, restricted letting agents, pastoral houses, property developers, motor dealers, auctioneers and commercial agents.

In 2004 Cabinet noted the completion of a review of the Act and approved the proposals for legislative amendment contained in the Minister's Outcomes of Review Report tabled in the Legislative Assembly on 24 November 2004.

The review of the Act confirmed that it has worked well over the 3 years in providing high levels of consumer protection across a range of industries as well as promoting best practice in those industries. Nevertheless, the Report detailed a number of additional consumer protection measures as well as a number of industry performance enhancement initiatives and a significant number of technical amendments to assist the Act in achieving its purpose.

With respect to the amendment to the other Acts, the Department administers over 70 pieces of legislation and it is necessary to amend the legislation to address minor or technical issues which arise from time to time.

Achieving the Objectives

The Bill intends to improve the effectiveness of existing provisions. This will be achieved by making amendments to the Act to address inappropriate practices such as under or over quoting of property prices by real estate agents.

Other initiatives include ensuring motor dealers operate from approved premises, increasing penalties for unlicensed motor dealing and ensuring that motor dealers do not avoid their statutory obligations by pretending to be private sellers. Penalties will be introduced for excessive or improper commission offences as well as a requirement that such commissions are returned to the client.

Administrative costs

Any financial impact from the development and implementation of initiatives in the Bill will be met from the Department's existing budget allocations.

Fundamental Legislative Principles

None of the amendments raise issues relating to Fundamental Legislative Principles.

Consultation

A broad range of groups were consulted during the review and subsequent policy development stages leading to the preparation of the Bill. These groups include:

Community Agencies

- Auctioneers (selected motor dealing auctioneers);
- Auctioneers and Valuers Association of Australia*;
- Australian Finance Conference;
- Australian Property Institute;
- Gold Coast Property Owners Association;
- Institute of Mercantile Agents (Commercial Agents);
- Legal Aid Queensland*;
- Local Government Association of Queensland;
- Motor Traders Association of Queensland (MTAQ)*;
- Property Owners Association of Queensland*;
- Property Sales Association of Queensland*;
- Queensland Consumer's Association Inc*;
- Queensland Law Society*;
- Queensland Livestock Agents Association*;
- Queensland Resident Accommodation Managers Association (QRAMA)*;

- Real Estate Institute of Queensland (REIQ)*;
- Royal Automobile Club of Queensland (RACQ)*;
- Tenants' Union of Queensland;
- Unit Owners Association of Queensland;
- Urban Development Institute of Australia (UDIA);
- Licensees (under the Act); and
- consumers.

Government Agencies

- Department of the Premier and Cabinet*;
- Queensland Treasury*;
- Department of Justice and the Attorney-General;
- Department of State Development and Innovation;
- Department of Employment and Training;
- Department of Public Works (Q Fleet);
- Queensland Transport;
- Department of Housing;
- Department of Natural Resources and Mines; and
- Local government authorities.

In relation to the minor and technical amendments to other Acts no stakeholder consultation was required or undertaken.

Community

Extensive consultation has been held in order to evaluate the current effectiveness of the Act. The proposed Bill is the result of this consultation. On 28 June 2002, the Office of Fair Trading (OFT) published a notice on its web-site, announcing the review of the Act and calling for public submissions. Advertising was also placed in the general media and industry journals in July 2002. The closing date for receipt of submissions was 30 September 2002.

Seventy submissions were received from industry and the wider community by the closing date. At least a further 6 submissions were received from key stakeholders after that date and given full consideration.

In March and April 2003, the OFT facilitated informal, targeted working party meetings with key stakeholders to discuss the major issues raised in the submissions. Participants on the working parties are indicated in the list above (*).

In general, agreement or compromise was reached on most of the issues raised.

Government

Key government stakeholders have been consulted. No concerns have been raised in relation to the proposed amendments.

Notes on Provisions

Clause 1 sets out the short title by which this Act will be known.

Clause 2 provides for the commencement date of the Act. Clauses 11, 15, 16, 19, 21, 23, 33, 34, 40, 41, 47 to 52, 60, 61, 65 to 68, 75, 76 and 84 will commence on a date set by proclamation. The remaining clauses will commence on assent.

Clause 3 states that Part 2 and Schedule 1 will amend the Act. Schedule 1 makes minor and consequential amendments to the Act, but in particular changes the title “restricted letting agent” to “resident letting agent” throughout the Act to better reflect the nature of the role.

Clause 4 inserts an exemption from the licensing and conduct requirements imposed on people performing auctioneering duties currently contained in Chapter 7 of the Act in two specific situations. Clause 4 will exempt charities, religious denominations and organisations formed for a community purpose within the meaning of the *Collections Act 1966* from complying with Chapter 7 where the ‘auctioneer’ receives no reward for conducting the auction/s and the proceeds of the auction are paid directly to the charity. This amendment recognises that charity auctions, often involving a “celebrity” auctioneer as a drawcard, are a fund raising strategy used by many charities.

Clause 4 also exempts auctioneers invited to participate in the well known annual Gold Coast Horses in Training Sale. The Sales, also known as the *Magic Millions* thoroughbred racing horse sales, attract international attention and are a significant racing and tourism industry event. The exemption will apply only where the sale is conducted for Magic Millions Sales Pty Ltd and the person conducting the sale is approved by the chief executive before the sale as a suitable and appropriate person to conduct the sale.

Clause 5 and clause 10 deal with the situation where receivers appointed under the Act and liquidators or other controllers appointed under the Corporations Act, manage or assume control of licensed corporations. Clause 5 inserts a new section 5A into the Act. This new section provides an exemption from the licensing provisions of the Act for receivers, liquidators and other controllers who may be engaged or appointed to manage or control a licensed corporation in instances such as receivership, administration or liquidation.

This amendment is necessary as currently the Act would require receivers, liquidators and other controllers to hold the relevant licence under the Act. If they do not have a licence, they and the corporation will commit an offence and the corporation will not be able to retain any commission earned.

The exemption provided to a receiver, liquidators or other controller for a particular licensed corporation will be limited to those activities that the corporation was limited to performing by condition imposed on its licence. For example if the corporation's licence was limited to motor dealing wrecking then the activities the receiver, liquidators or other controller could undertake would similarly be limited to motor dealing wrecking activities.

Clause 6 inserts a new section 8 in the Act. The existing section 8 exempts *del credere* agents from compliance from the trust account provisions in Chapter 12 of the Act. A *del credere* agency is one where the livestock agent accepts appointment on the basis that the agent guarantees payment of the proceeds of sale of livestock to the seller, regardless of whether the agent has received or will receive the proceeds from the buyer.

Livestock sales, unlike any other arrangement, are exempt from the legislative requirement for the agent to secure a written appointment in the approved form. However, there is a legislative requirement in the Act for the agent to agree in writing before each sale about the *del credere* arrangement.

*Property Agents and Motor Dealers Act and Other Acts
Amendment Bill 2005*

The new section 8 will provide that whilst a written payment guarantee requirement should be maintained for *del credere* sales, a separate written guarantee is not required prior to each and every sale and an ongoing agreement with a particular vendor is recognised as sufficient compliance with section 8 of the Act.

Clause 7 amends section 13 which provides examples of when a licensee or a registered employee or property developer has a beneficial interest in property.

Under the predecessor of the Act (the *Auctioneers and Agents Act 1971*) the beneficial interest provisions captured the situation where a licensee is a corporation and a purchase or sale of property (or an option to purchase or sell) is made on behalf of an executive officer of the corporation. This was inadvertently omitted from the Act. A further case omitted was the situation where a licensee is a corporation and the purchase of the property (or an option to purchase or sell) is made for an executive officer of a corporation of which the registered employee or an associate of the registered employee is an executive officer. The amendment will rectify these omissions by inserting these four further cases.

Clause 8 and clause 14 amend sections 33(1) and 88(1). These sections prohibit the disclosure, directly or indirectly, of any information received about a person's criminal history while dealing with applications for licenses and certificates of registration under Act.

The amendments remove the reference to 'An officer, employee or agent of the department' and insert 'A public service employee performing functions under this Act'. This is a minor amendment which complements others made to the Act to enable appropriate functions of the Department to be undertaken by other departments, for example, those associated with the *Smart Service Queensland* initiative.

Clause 9 amends section 44 which prescribes eligibility criteria which must be satisfied before a person or corporation may receive a motor dealer's licence. Under the Act, an applicant for a motor dealer's licence must provide information about the place at which business is to be conducted. The ability to use specific premises for the carrying on of a business is a local government issues. However, there is no requirement for a motor dealer to provide the Office of Fair Trading with evidence of such approval.

In other jurisdictions applicants must provide proof that their activities will comply with town planning requirements before a licence can be granted.

It is considered appropriate to impose a similar requirement on motor dealer licence applicants in Queensland. This will preclude obtaining a licence for “backyard” operations where there is a greater possibility of illegal or fraudulent practice. There are transitional provisions.

Clause 10 amends section 54 to complement the amendments made in clause 5 in relation to the exemption for receivers, liquidators and other controllers from the licensing requirements of the Act.

Clause 11 amends section 74 of the Act which provides grounds for the suspension of a licence where there has been an apparent irregularity or deficiency in the licensee’s trust account. The amendment inserts a further ground upon which a licence may be suspended.

This further ground for suspension arises where a licensee is convicted of an offence of failing to lodge a trust account audit report and, at the expiration of the relevant appeal period for the conviction, still fails to lodge the report. The chief executive may suspend the licence of the licensee until the licensee files the required audit report or an application to the Commercial and Consumer Tribunal for the cancellation of the licence is heard and decided, whichever is first.

This amendment recognises the importance of trust account requirements as a consumer protection mechanism.

Clause 12 will amend section 75 of the Act which provides for the automatic cancellation of a licensee’s licence in certain circumstances. The amendment will include, for a corporate licensee, instances of ‘winding up’ or ‘striking off’. This will complement the amendment to section 54 (clause 10), and the inclusion of the proposed section 5A (clause 5) into the Act which relates to the exemption provided to liquidators and other administrators to the licensing provisions.

Clause 13 inserts a new section 84A into the Act. The new section will apply where an application is made for a registration certificate to become a registered employee. Every industry group regulated under the Act uses registered employees.

The new section 84A will allow the chief executive to request any further information considered reasonably necessary to consider the application within a stated reasonable time. If the required material or information is not provided within the stated timeframes, then the application will be considered to be withdrawn. A similar provision already exists for licence applications (section 24) and it is an anomaly that it was not previously mirrored for registration certificate applications.

Clause 14 – see notes to Clause 8.

Clause 15 amends section 114 to mirror an amendment made to section 133 of the Act by the *Tourism, Fair Trading and Wine Industry Development (Miscellaneous Provisions) Act 2005* to ensure that it is clear that activities undertaken by a resident letting agent can only be performed for a client after that client has appointed the agent in writing. Clause 40 amends section 210 in a similar manner in relation to auctioneers.

Clause 15 also amends section 114 consequent to the amendment in clause 16 in relation to the assignment of appointments. Clauses 21, 33, 40, 60 and 75 make similar amendments in relation to real estate agents, pastoral houses, auctioneers, motor dealers and commercial agents.

Clause 16 inserts a new section 115A into the Act. The new section applies when resident letting agents sell their property management business. Resident letting agents must be appointed in writing before they can perform any tasks for their clients. The new resident letting agent would have to seek written appointments from all clients of the selling resident letting agent before they could continue managing each client's property. This presents a difficulty for agents and clients in continuity of service.

The new section will overcome the difficulty. If the original appointment contemplates such an assignment and the terms of the appointment remain the same in all respects, it will not be necessary for the new agent to obtain a new written appointment. If the appointment does not provide for assignment then, if the client is informed by written notice of the assignment at least 14 days beforehand, the terms of the appointment remain the same, and the client agrees to the assignment, the new agent will not need to obtain a new written appointment.

The new section will not affect the current rights to terminate an appointment as provided for in the Act.

Clauses 23, 34, 41, 61 and 76 “mirror” this amendment by inserting new sections 135A, 175A, 212A, 285A and 345A for real estate agents, pastoral houses, auctioneers, motor dealers and commercial agents respectively.

Clause 17 firstly makes amendments to section 117 to change all references from “restricted letting agent” to “resident letting agent”.

Clause 17 further amends section 117 in relation to rewards (commissions) and expenses improperly retained by a resident letting agent.

The Act provides that an agent is not entitled to sue for, or recover or retain a reward or expense for the performance of an activity unless the agent holds the relevant licence; is authorised under the agent's licence to perform the activity; and the agent has been properly appointed by the person paying the reward or expense.

These provisions have an important consumer protection role. However, it is currently not an offence to breach these requirements. There is therefore little incentive for compliance with the Act in this regard. Penalties are introduced for a breach of these provisions.

Clauses 24, 25, 35, 36, 42, 43, 62 and 77 also make amendments consistent with the amendment in clause 17 in relation to real estate agents, pastoral houses, auctioneers, motor dealers and commercial agents.

Clause 18 complements the new offence provisions in clause 17 in relation to improperly retained commissions and other expenses by resident letting agents.

It is already an offence under section 116 to recover or retain a commission calculated on an amount more than the actual purchase price or rent collected to order the return of any excess commission or other expense. Under section 118, where the court has convicted a person under this provision, it is also required to order the return of the excess commission or other expenses.

In line with this, clause 18 amends section 118 to require a court to order the return of money claimed or retained where it convicts a resident letting agent of a breach of the new offence provisions.

Clauses 26, 37 and 44 and 63 make amendments consistent with the amendment in clause 17 in relation to real estate agents, pastoral houses, auctioneers and motor dealers.

Clause 19 inserts a new section 124A into the Act. The section will apply if a resident letting agent enters into a contract to purchase management rights for residential property held by another resident letting agent. Before the contract is settled, the existing letting agent must make available the trust account records for the preceding 5 years for the residential property to which the management rights relate.

The new section will ensure minimal disruption to the business of the agent to the benefit of the agent, tenants and property owners, and also enable the new resident property agent to have accurate information in relation to the letting pool.

Clause 20 amends section 132 of the Act. Section 132 requires a licensed real estate agent or resident letting agent to be in charge of each registered place of business from which the agent trades. In the case of multiple places of business the real estate agent is required to engage another licensed real estate agent/s to 'run' the other places of business. The amendment will waive this requirement where two or more places of business of the one agent are on adjoining land with a common boundary and are not separated by a public road. This amendment is particularly relevant to agents involved in running property management businesses in unit complexes which may have two or more separate but contiguous unit towers or complexes.

Clauses 32, 58 and 74 make amendments which mirror the clause 20 amendment for pastoral houses, motor dealers and commercial agents.

Clause 21 – see notes to clause 15.

Clause 22 inserts an exception to section 135 for specific circumstances. The section imposes a 60 day limit on a sole or exclusive agency agreement for the sale of residential property. Where there is a sale of management rights by a resident letting agent, the unit in which the letting agent resides will also be sold. The sale of the management rights is a commercial transaction not caught by the 60 day rule while the sale of the unit is a residential property transaction which is caught.

Section 135 is amended to remove the 60 day limit on a sole or exclusive agency agreement for the sale of the residential unit associated with the sale of management rights to recognise that this sale is part of a commercial transaction.

Clause 23 – see notes to clause 16.

Clause 24 - see notes to clause 17.

Clause 25 – see notes to clause 17.

Clause 26 - see notes to clause 18.

Clause 27 inserts a new section 145A into the Act. In the broad, it is already an offence under section 145 of the Act for a real estate agent or a real estate salesperson to obtain a beneficial interest in a property which is placed with them to sell.

The new section 145A will require a Court to order the return of money claimed or retained where the Court convicts a person of such an offence. This complements, and is consistent with, the amendments described in the notes at clause 17 above.

*Property Agents and Motor Dealers Act and Other Acts
Amendment Bill 2005*

Clauses 38, 45 and 64 insert new sections 184A, 222A and 292A which “mirror” the amendment in clause 27 in relation to pastoral houses, auctioneers and motor dealers.

Clause 28 firstly makes amendments to section 153 to change all references from “restricted letting agent” to “resident letting agent”.

Clause 28 further amends section 153 to require a real estate agent acting in the sale of a resident letting agent’s business to give a proposed buyer a written notice including certain information. The amendment will require the notice to include a statement that the buyer has read the notice and that the buyer sign the notice. This will assist in ensuring that there is compliance with the requirement to provide the notice.

Clause 29 amends section 160 of the Act to clarify types of activities which would not lead to a person being considered as performing the duties of a real estate agent and therefore requiring a real estate agent’s licence. These activities include the purely administrative actions of receiving and issuing receipts for rents received at the licensee’s registered office; giving a person a list, prepared by the licensee, of premises available for rent, and other activities of an administrative nature undertaken within the agency.

Clause 30 amends section 161 of the Act to clarify types of activities which would not lead to a person being considered as performing the duties of a real estate salesperson and therefore requiring a registration certificate, consistent with the amendments in clause 29.

Clause 31 amends section 163 of the Act which currently requires a licensed real estate agent to produce the agent’s licence for inspection by a person with whom the agent is dealing. The amendment will impose the same requirement on real estate salespersons to produce their certificate of registration upon request.

Clauses 39, 56, 73 and 78 amend sections 203, 259, 337 and 357 to “mirror” the amendment in clause 31 in relation to pastoral houses, auctioneers, motor dealers and commercial agents.

Clause 32 – see notes to clause 20.

Clause 33 - see notes to clause 15.

Clause 34 – see notes to clause 16.

Clause 35 – see notes to clause 17.

Clause 36 – see notes to clause 17.

Clause 37 – see notes to clause 18. It also provides for the return of unauthorised commissions in relation to a current offence of a pastoral house claiming commission worked out on an amount more than the actual sale price of the property (section 178).

Clause 38 – see notes to clause 27.

Clause 39 – see notes to clause 30.

Clause 40 – see notes to clause 15.

Clause 41 – see notes to clause 16.

Clause 42 – see notes to clause 17.

Clause 43 – see notes to clause 17.

Clause 44 – see notes to clause 18. It also provides for the return of unauthorised commissions in relation a current offence of an auctioneer claiming commission worked out on an amount more than the actual sale price of the property (section 216).

Clause 45 – see notes to clause 27.

Clause 46 amends section 236 to complement the proposed amendments to section 244 of the Act (clause 53) relating to the delivery of a vehicle where a buyer believes the vehicle requires repair under the statutory warranty.

Clause 47 amends section 238 of the Act. Motor dealers are obliged to provide a statutory warranty on all used vehicles, regardless of the vehicle's age. Therefore the same warranty conditions apply to an 11 year old vehicle and an 80 year old vehicle.

The amendment introduces the concept of a restorable vehicle, a vehicle which is at least 20 years old and is being sold for the purpose of restoration. If a motor vehicle comes within the definition it may be sold without a statutory warranty.

The amended section 238 will detail how a restorable motor vehicle may be sold at auction and in particular that an auctioneer must advertise or display for sale a restorable vehicle in the way prescribed under a regulation. The amendment will also make it an offence for failing to comply with these requirements.

Clause 48 will introduce a new section 238A into the Act. The new section will complement the amended section 238 by ensuring that bidders at sales

where restorable motor vehicles are being auctioned are aware that no statutory warranty applies to the restorable vehicles.

Specifically before a restorable vehicle is offered for sale, an auctioneer must invite persons intending to bid for the vehicle to register as bidders for the sale. The auctioneer must also inform potential bidders that by registering as a bidder, the person agrees to purchase the restorable vehicle without a statutory warranty.

Clause 49 amends section 239 of the Act by requiring an auctioneer to make a single declaration before the sale of one or consecutive lots of restorable motor vehicles that no statutory warranty applies to the vehicle/s; the vehicle/s may only be sold to registered bidders; by bidding on the vehicle/s the successful bidder accepts that the statutory warranty on the motor vehicle will be waived; and that bids from non-registered bidders will not be accepted. The amendment introduces an offence for non-compliance with these requirements by the auctioneer.

Clause 50 inserts new section 239A and clarifies that the statutory warranty for a restorable vehicle stops having effect when the auctioneer announces that the vehicle is sold to the registered bidder whose bid has been accepted as the winning bid.

Clause 51 inserts into section 241 the requirement that immediately after the contract of sale of a restorable vehicle is completed, the auctioneer must give the buyer a notice stating that the motor vehicle was sold without a statutory warranty.

Clause 52 amends section 243 of the Act which provides a list of items which are not covered by the statutory warranty imposed under the Act where vehicles are sold by auction. Items on the list include tyres, batteries, lights etc.. This list has been removed and reference is now made to items prescribed in the *Property Agents and Motor Dealers Regulation 2001*. This amendment will more readily facilitate amendment to the list of items when the need arises in the future.

Clause 68 amends section 319 in a similar manner to clause 52 in relation to sales by motor dealers.

Clause 53 replaces section 244 of the Act which provides that if the buyer of a used vehicle by auction believes it has a defect which the warrantor must repair under the statutory warranty, the buyer must give the warrantor a notice of the defect and deliver the vehicle either to the warrantor, or to someone else nominated by the warrantor to repair the defect.

If a warranted vehicle needs repair but the vehicle is a significant distance from the warrantor, a consumer is considerably disadvantaged if the vehicle has to be returned to the warrantor rather than to a repairer nearer to the location of the vehicle.

The new section 244 includes provisions which require that, if the vehicle is more than 200kms from the warrantor at the time the defect notice is given, the vehicle is to be taken to the nearest qualified repairer. However, the warrantor may nominate another qualified repairer, in which case, the warrantor is responsible for the delivery costs of the vehicle to that repairer. Clause 69 “mirrors” this amendment when the vehicle is purchased through a motor dealer by amending section 320.

Clauses 54 and 55 make minor amendments to sections 245 and 247 to complement the proposed requirements in sections 244 (clause 53).

Clause 56 – see notes to clause 31.

Clause 57 amends section 279 of the Act to delete references to “complete units” to make it clear that wreckers and dismantlers can only deal in parts.

Clause 58 – see notes to clause 20.

Clause 59 inserts a new section 283A into the Act. The new section will address the practice of a few licensed motor dealers who sell motor vehicles ‘privately’ without disclosing their licensed status so as to avoid their duties under the Act, namely to provide a one business day cooling-off period and a statutory warranty on the sale of used vehicles other than commercial vehicles.

The new section will mean that motor dealers will always be presumed to act as a licensee in the sale of any motor vehicle and ensure they will have to observe their statutory obligations whenever they sell a motor vehicle. This will ensure that motor vehicles in poor condition, in particular, are not sold “privately” to avoid the statutory cooling off or warranty periods.

A maximum penalty of 400 penalty units for a breach of this provision will be allowed.

Clause 60 – see notes to clause 15.

Clause 61 – see notes to clause 16.

Clause 62 – see notes to clause 17.

Clause 63 – see notes to clause 18.

Clause 64 – see notes to clause 27.

Clause 65 to 67 amend the Act in relation to the sale of older vehicles by motor dealers to complement the amendments in clauses 47–51 in relation to the auction of motor vehicles.

Clause 65 amends section 316 by allowing the advertising or display for sale of a restorable vehicle in a way prescribed by a regulation.

Clause 66 inserts a new section 316A into the Act. The new section enables the purchaser of a restorable motor vehicle to waive the statutory warranty.

Clause 67 amends section 317 consequent to clauses 65 and 66 of the Act by requiring that immediately after the contract of sale of a restorable vehicle is completed, the motor dealer must give the buyer a notice stating that the motor vehicle was sold without a statutory warranty.

Clause 68 – see notes to clause 52.

Clause 69 – see notes to clause 53.

Clause 70 makes a minor amendment to section 321 to complement the proposed requirements in sections 320 (clause 69).

Clause 71 amends section 327 of the Act. Section 327 requires a motor dealer who changes their place of business to notify the chief executive within 14 days of the change. The amendment will require the motor dealer to provide evidence that the premises have been approved by the relevant local authority for use as a motor dealer's business. This complements, and is consistent with, the amendments which clause 9 makes to section 44 requiring proof from a motor dealer who is applying for a licence that they have local authority approval to use the proposed location for carrying on a motor dealing business.

Clause 72 will amend section 334 by increasing the penalty for unlicensed motor dealing from 200 to 400 penalty units. The maximum term of imprisonment of 2 years will remain unchanged.

Clause 73 – see notes to clause 31.

Clause 74 – see notes to clause 20.

Clause 75 – see notes to clause 15.

Clause 76 – see notes to clause 16.

Clause 77 – see notes to clause 17.

Clause 78 – see notes to clause 31.

Clause 79 inserts an example into section 364 of how the cooling off period in relation to residential property sales applies.

Clause 80 inserts an example in section 385 of when a transaction is finalised and thereafter funds may be drawn from a licensee's trust account.

Clause 81 amends section 407(2) of the Act and will impose a penalty of 200 penalty units for non-compliance by an auditor in relation to the form and content of trust account audit reports.

Clause 82 amends section 417 of the Act. The section details the situations in which the chief executive may appoint a receiver in relation to a licensee's trust account or for any property held in trust by the licensee. The amendment adds the suspension of the licensee's licence as an event which may allow a receiver to be appointed.

Clause 83 amends section 573 of the Act which prohibits the dishonest conversion of money held in a licensee's trust account. Section 573(3) will be amended to make it an offence to dishonestly use money belonging to someone else irrespective of whether it is held in a trust account or otherwise.

Clause 84 inserts new sections 574A, 574B, 574C and 574D to address issues of over or under quoting on selling prices.

Under section 574A, auctioneers will be required to ask for a reserve price from the vendor prior to the commencement of the auction. If the vendor does not set a reserve price, the auctioneer must give a notice to the vendor of the possible consequences of selling without a reserve.

If the auctioneer advised or assisted the vendor in arriving at a reserve price, the auctioneer must be able to substantiate the price by providing a comparative market analysis document (CMA). A CMA provides details of recent sales in the area of the subject property. If a CMA is not available because of lack of sales activity, then the auctioneer must provide a written explanation outlining how the agent arrived at the likely selling or market price.

Penalties that apply for breaches of the new provisions will be the same as for breaches of the general provision for false representation about property, that is, 540 penalty units. However, failure by an auctioneer to either ask for a reserve price, or to provide a notice of the consequences of not having a reserve price will attract a penalty of only 200 penalty units, in line with the general penalty applicable to failure to disclose information required by the Act.

New section 574B will prohibit an auctioneer giving any bidder advice on whether a reserve price has been set, what that reserve price is or the price the property is likely to sell for. However, with the sellers consent, the auctioneer may give a copy of the CMA or the written explanation that was prepared for the subject property to any bidder.

New section 574C will address concerns about misrepresentation of selling/purchase price by real estate agents. The new section will prohibit agents from over or under quoting the selling or purchase price of residential property.

The new section will require real estate agents to substantiate any price quoted with a comparative market analysis (CMA) which compares similar sales in the area. If a CMA is not available because of a lack of sales activity in the area, then the agent must provide the seller with a written explanation of how the agent arrived at a market or selling price for the property.

Finally, new section 574D will prohibit a real estate agent disclosing the reserve price or price at which the seller is willing to sell the property for to a potential buyer of a property that the agent has for sale by auction or otherwise. However, the seller may authorise the agent to release the CMA or the written explanation prepared for the property to a potential buyer.

Penalties for breaches of the new provisions will be the same as for breaches of the general provision for false representation about property, that is, 540 penalty units.

Clauses 85 and 86 are minor amendments. Sections 582 and 583 requires a person to not knowingly provide false or misleading information or documents to an “official”. The definition of “official” is broadened by the amendment to include a public service employee. This complements previous amendments which enable services delivered by the Department to be delivered by other departments, for instance, in relation to services delivered through the *Smart Service Queensland* initiative.

Clause 87 inserts transitional provisions. In particular, there is a transitional provision in relation to section 367. The provisions enabling the electronic transmission of contract and pre-contract documents were included in the *Liquor and Other Acts Amendment Act 2005* (the Liquor Act) and commenced on 1 December 2005. This clause limits the statutory rights of buyers, whose contracts for the purchase of proposed lots in community title schemes were on foot at the time the Liquor Act

amendments came into force, to terminate a contract of sale on the grounds the statutory warning statement was not provided in accordance with the Act as a result of using electronic transmission. Such buyers have one calendar month from assent of the Bill to exercise their rights in this regard. This amendment is to provide certainty to contracts with a long settlement period entered into before the issues relating to electronic communication were fully appreciated.

Clause 88 amends some definitions provided in the Schedule 2 dictionary to the Act. These include the definition of “minor debt claim” being amended from a claim against the fund of not more than “\$5,000” to a claim against the fund of not more than “\$10,000”, and the definition of “used motor vehicle” being amended to capture motor vehicles used for demonstration or sales promotion purposes.

Amendment of other legislation

Clause 89 amends the *Body Corporate and Community Management Act 1997* to complement, and be consistent with, the amendment in relation to the electronic submission of documents contained in clause 87.

Clause 89 also makes minor or technical amendments to the Act and other Acts listed in Schedule 2. These amendments include:

Section 25 of the Business Names Act 1962 requires that completed Business Name Renewal Forms must be stored for 12 months before they can be destroyed. The amendment will reduce the time the forms are retained from 12 months to 1 month which will be an administratively more effective than the current longer term storage requirements. This amendment is acceptable taking into account the *Financial Management Standard 1997* and the *Public Records Act 2002*.

Generally, a charity registered under the *Collections Act 1966* cannot distribute income or property among its members. The amendment to section 29 of the *Collections Act 1966* will allow a charity to distribute funds to members if the members are themselves charities. This will address an emerging structure which is intended to facilitate national fund raising activities.

Queensland is party to a national scheme regulating travel agents. The Ministerial Council on Consumer Affairs has undertaken a National Competition Policy review of the scheme which endorsed the removal of the licensing exemption for Crown owned businesses. The Bill will therefore do this through amendment to the *Travel Agents Act 1988*. Since

*Property Agents and Motor Dealers Act and Other Acts
Amendment Bill 2005*

Sunlover Group Pty Ltd has for some time voluntarily held a travel agent's licence, there will be no practical effect as a result of the amendment.

Amendments of a minor nature will also be made to:

Introduction Agents Act 2001

Land Sales Act 1984

Partnership Act 1891

Second-hand Dealers And Pawnbrokers Act 2003

Security Providers Act 1993