

Property Occupations Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the Property Occupations Bill 2013.

Policy objectives and the reasons for them

The objectives of the Bill are to:

1. Provide for the repeal and split of the *Property Agents and Motor Dealers Act 2000* (PAMD Act). The Bill is one of four Bills that will split the PAMD Act. The Bill regulates property related occupations and aims to achieve an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the market place.
2. Simplify and reduce the level of red tape and regulation the PAMD Act currently imposes on the property industry.
3. Improve the operation of the legislation and clarify particular provisions.

Provide for the repeal and split of the PAMD Act

The PAMD Act provides a licensing and conduct framework for businesses and individuals operating in the real property sector (i.e. real estate agents, pastoral houses, resident letting agents, property developers and particular registered employees of licensed agents), as well as used motor dealers, auctioneers, debt collectors and process servers. In addition, the PAMD Act includes requirements regarding residential property sales (including in relation to pre-contractual disclosure), which intersect with other legislation including the *Property Law Act 1974*, *Land Sales Act 1984* and the *Body Corporate and Community Management Act 1997*. The PAMD Act also establishes a claim fund designed to compensate consumers who suffer financial loss as a result of the actions of licensed agents.

The PAMD Act serves a number of important public policy objectives. However, over time it has become increasingly cumbersome and difficult to use. It has also been characterised by increasing levels of complex and technical regulatory requirements that in many instances, are a disproportionate and ineffective response to the policy problems they are designed to resolve. In addition, the complex nature of the PAMD Act limits its capacity to be responsive to the needs of each industry it regulates.

The Motor Dealers and Chattel Auctioneers Bill 2013, Debt Collectors (Field Agents and Collection Agents) Bill 2013, Agents Financial Administration Bill 2013 and this Bill (collectively the Agents Bills 2013), will provide for the repeal and split of the PAMD Act into three industry specific Acts with one common administration Act. This structural change will facilitate a modern legislative framework that is more responsive to the individual needs and characteristics of the regulated industry sectors.

Reduce the level of red tape and regulation

In February 2013 drafts of the Agents Bills 2013 were released for public consultation and red tape reduction review. Over 86 submissions and 155 different proposals were received from stakeholders. The objective of the red tape reduction review was to identify provisions of the draft Agents Bills 2013 that could be amended or removed to alleviate time and cost burdens (i.e. red tape) for industry. The red tape reduction review highlighted that there was considerable scope to reduce the regulatory burden imposed on industries regulated by the PAMD Act without adversely impacting on consumers.

Generally speaking, to reduce the level of red tape and regulation the PAMD Act currently imposes on the property industry, the Bill makes changes to:

- streamline home sale contracts and statements
- rationalise and consolidate the existing licence categories under the PAMD Act
- deregulate the maximum commissions payable
- provide appropriate exemptions from the Act or particular provisions of the Bill
- provide a limited exemption from the residential property sales provisions
- simplify the requirements associated with a buyer's termination notice during the statutory cooling-off period
- improve the disclosure requirements
- simplify the provisions about the appointment of an agent
- reduce the regulation of resident letting agents
- remove lawyer's certificate requirements
- remove unnecessary obligations imposed on licensees and businesses

More detailed information about the red tape reduction amendments is provided in the Achievement of policy objectives section below.

Improve the operation of the legislation and clarify particular provisions

The Bill also improves the operation of the legislation regulating property occupations and clarifies particular provisions. The repeal and split of the PAMD Act into four separate Acts also provided an ideal opportunity to make these amendments to the provisions that were part of the PAMD Act, including by:

- simplifying the definition of residential property;
- ensuring the disclosure of interest provisions apply to marketeers and the sale of a house and land package; and
- clarifying that price guides at auction are banned.

Achievement of policy objectives

Provide for the repeal and split of the PAMD Act

The Government has committed to growing a four pillar economy in Queensland and reducing red tape and regulation for industry. The repeal and split of the PAMD Act aligns with the Government's priorities and the Government's Property and Construction Strategy by establishing Bills that are appropriately responsive to the needs of each respective industry and removing unnecessary red tape.

Industry groups will benefit from having legislation and obligations that are specific to their line of business. In addition, industry-specific Acts will mean future legislative reforms will be more responsive to marketplace changes in each industry. This is anticipated to lead to increased industry standards, simplified compliance and increased consumer confidence in the regulated industries. The PAMD Act will no longer impose a 'one size fits all' approach to regulating the property, used motor dealing, auctioneering and debt collection industries.

The PAMD Act currently provides for the licensing and regulation of real estate agents, resident letting agents, pastoral houses, property developers, motor dealers, auctioneers and commercial agents (agents performing the functions of debt collection, repossession and process serving). The PAMD Act also serves a number of important public policy objectives.

The Bill is one of four Bills (three industry specific licensing Bills with one common agent's administration Bill) that will facilitate the repeal and split of the PAMD Act. The Bill provides the licensing system for real estate agents, auctioneers of real property, and resident letting agents. The Bill also provides a registration system for real estate salespeople whom are employees of real estate agents. Existing licence types that are provided for in the PAMD Act will be transitioned into these categories; except for property developers which will be de-licensed. Similar to the PAMD Act, the Bill also regulates property transactions, provides a way of protecting consumers against particular undesirable practices associated with the promotion of residential property, and aims to achieve an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the market place.

The other two industry specific licensing Bills are the Motor Dealers and Chattel Auctioneers Bill 2013 and the Debt Collectors (Field Agents and Collection Agents) Bill 2013. Consistent with the PAMD Act, licensees and registered employees regulated by the three industry specific Bills will have particular financial administration requirements. These requirements will be imposed through the Agents Financial Administration Bill 2013, which is a Bill to provide for the administration of trust accounts held by agents regulated under an Agents Act (including property agents and resident letting agents). The Agents Financial Administration Bill 2013 also includes the provisions of the PAMD Act that establish a claim fund to compensate persons in particular circumstances for financial loss arising from dealings with agents.

The compliance and inspectorate provisions to enforce the industry specific Bills are provided for in the Fair Trading Inspectors Bill 2013, which consolidates and harmonises inspectors' powers across 14 Acts about fair trading.

Reduce the level of red tape and regulation

The Bill will achieve its objective of reducing the level of red tape and regulation, while maintaining effective consumer protections by implementing the policy changes discussed in more detail below. These initiatives are consistent with the Government's priorities, strategies, and commitments.

Streamline home sale contracts and statements

The Queensland Government announced its intention to streamline home sale contracts and statements during the state election campaign in 2012.

Since the state election, the Treasury (Cost of Living) and Other Legislation Amendment Bill 2012 repealed the provisions of the *Building Act 1975* and PAMD Act that imposed requirements in relation to the preparation and provision of a sustainability declaration prior to the sale of residential dwellings, thereby streamlining home sale contracts.

The Body Corporate and Community Management and Other Legislation Bill 2012 further streamlined home sale contracts by removing the requirement for a seller of an existing lot to give a buyer a copy of the community management statement for the scheme.

The Bill will also streamline home sale contracts by significantly reducing the regulatory burden that has been imposed on these contracts through the provisions of the PAMD Act. Currently, the PAMD Act prescribes a complex process which must be followed when presenting and delivering residential real estate contracts. These processes require several approved forms to be presented and delivered to a real estate buyer in a specified way and order. In addition, failure to comply with the existing provisions of the PAMD Act constitutes grounds for terminating the contract. It is considered that the existing provisions do not appropriately balance the rights and needs of buyers and sellers. The Bill repeals the existing warning statement provisions and replaces them with a simple requirement for a prescribed statement to be included in particular home sale contracts. The consequence for failing to comply with these new provisions will be a maximum penalty instead of a termination right.

Rationalise and consolidate the existing licence categories under the PAMD Act

With respect to the property related occupations, the PAMD Act currently provides for nine categories of licence and four categories of registered employees. The Bill rationalises and consolidates the existing types of licences by providing for three licence categories (real estate agents, auctioneers and resident letting agents) and one category of registered employee. The following table summarises how existing licensees will be transitioned into the new licensing framework.

Category under PAMD Act		Existing licensees will be transitioned to the following categories of licence under the Bill
Licensees		
1.	Real estate agent	Real estate agent
2.	Pastoral house	Real estate agent Auctioneer Chattel Auctioneer
3.	Pastoral house director	Real estate agent
4.	Pastoral house manager	Real estate agent
5.	Pastoral house auctioneer	Auctioneer Chattel Auctioneer
6.	Auctioneer (general)	Auctioneer Chattel Auctioneer
7.	Resident letting agent	Resident letting agent
8.	Property developer	Nil – no licence required
9.	Property developer director	Nil – no licence required
Registered employees		
1.	Real estate salesperson	Real estate salesperson
2.	Pastoral house salesperson	Real estate salesperson Auctioneer Chattel auctioneer
3.	Trainee auctioneer	Auctioneer – licence will expire after 1 year Chattel Auctioneer – licence will expire after 1 year
4.	Property developer salesperson	Real estate salesperson

It is considered that his approach provides minimal impacts on existing licensees. This approach also appropriately requires particular types of registered salespersons (trainee auctioneers and pastoral house salespersons) to undertake additional training within a 12 month period if they wish to continue acting under the new licence category as their transitioned licence will expire after one year and can not be renewed.

Importantly, licensees that may require more than one type of licence to conduct activities they were previously authorised to perform under one licence will be provided with a licensing fee concession to mitigate any negative impacts associated with transition for those licensees (i.e. auctioneers and pastoral house licensees).

De-licensing of property developers

The Bill removes the requirement for property developers and their employees to be licensed (Queensland is the only Australian jurisdiction currently licensing property developers). It is considered that this significant red tape reduction measure may generate employment growth, reduce barriers to entry in the property developer market, encourage market entrants and in turn, increase competition.

Importantly, the Bill continues to apply particular requirements on property developers including disclosure requirements (clause 158) and requirements in relation to accepting

deposits (Part 7, Division 3). This approach ensures the relevant and important consumer protection measures are maintained.

The regulation of commissions

Deregulation of real estate commission cap

Some of the objects of the PAMD Act are currently achieved by regulating fees and commissions that can be charged for particular transactions. The maximum commissions payable are prescribed in the *Property Agents and Motor Dealers Regulation 2001* for the purchase or sale of residential property, the letting of residential property, the collection of rents for residential property and on the sale of a building for removal. The commission payable for an agent's service is negotiable up to the prescribed amount. For example, the maximum commission payable on the purchase or sale of residential property that is over \$18000 is currently \$900 and 2.5% of the part of the price that is more than \$18000.

Queensland is currently the only jurisdiction in Australia which sets maximum levels of commissions for specified real estate transactions. National and State reviews (including reviews by the Prices Surveillance Authority (now the Australian Consumer and Competition Commission), and the former Service Delivery and Performance Commission) have recommended the deregulation of commissions.

While maximum commissions were initially intended to protect consumers, it has been found that, due to a lack of price competition and discounting between agents, the maximum commission rates set by government have effectively become the rates that agents charge. This restricts the choice of service providers for consumers and results in limited price competition between real estate agents.

The Bill repeals these provisions, providing a significant reduction in red tape and regulation for industry and promoting competition in the marketplace.

Allow agents to receive commission when beneficial interest

The Bill continues to ensure agents are required to disclose any beneficial interest to the seller but introduces amendments to allow an agent to obtain a commission when the seller has acknowledged the agent's beneficial interest and then subsequently agrees to the sale.

It is considered that the provisions that relate to beneficial interest should focus on disclosure when there is a beneficial interest, not penalising an agent for the interest by removing an agent's capacity to receive a commission for their services.

Agent's disclosure to buyer, commission that will be received from the seller

The Bill removes the requirement for an agent to disclose to a buyer, the amount of commission the agent will receive from the seller.

The disclosure of interest provisions are aimed at targeting the practice of marketeering (the sale of property at inflated prices to unsuspecting buyers) by requiring pre-contractual disclosure of interests, which may signal to a prospective purchaser the possibility that the

contract price may be inflated and that the actual market value of the property could be significantly lower than the sale price.

However, the disclosure of interest provisions are quite broad and currently include a requirement for the agent to disclose to the buyer the amount and level of commission the agent will be receiving from the seller. It is considered that the amount of commission the seller has agreed to pay the agent for the sale of their residential property is a private contractual matter that does not impact on a prospective purchaser. Given that the commission is payable by the seller, not the buyer, the buyer will not be disadvantaged or prejudiced by lack of such disclosure. As such, the Bill removes the requirement for an agent to disclose to a buyer, the amount of commission the agent will receive from the seller.

Provide appropriate exemptions

Exemption for administrators, liquidators, controllers and receivers

Under the PAMD Act, externally appointed administrators and receivers that have been appointed to deal with the insolvency of a corporate licensee are provided with an exemption from the licensing provisions.

The Bill maintains this exemption for administrators appointed for corporate licensees and also provides that external administrators of licensees who are individuals are also exempt from the licensing requirements of the legislation. This amendment to the current PAMD Act provisions will benefit industry and remove regulatory duplication for external administrators.

In addition, the Bill extends the exemption for administrators, controllers, liquidators and receivers from the licensing requirements of the legislation when they are appointed for corporations and natural persons which and who were formerly licensed. This is to ensure administrators etc can be appointed (and be exempt from the licensing provisions) for a corporation or person where the corporation or person was licensed but, for example, is unable to pay for their licence to be renewed and therefore becomes unlicensed. It is important that in these circumstances an administrator (or other prescribed person) is able to be appointed and exempt from the licensing provisions of the legislation to enable the business to be dealt with for the benefit of the licensee or former licensee, their clients and consumers generally.

Exemption for related entities

Clause 7 of the Bill provides entities that are acting on behalf of a related entity in relation to non-residential property transactions, with an exemption from the Act, when the entity is carrying on that business only in relation to the assets of the related entity. However, while the related entity is exempt from the Act, the entity must disclose in writing in any advertising or contract relating to the assets of the related entity, its relationship to the owner of the assets.

It is considered that a true agency relationship does not exist when an entity is acting in relation to the property assets of a parent company (a related entity). As such, the consumer protection and other elements of the legislation, which largely protect a real property owner from an agent, are not necessary and of no benefit. This proposal will benefit industry by

removing red tape for transactions involving ‘related’ entities and reduce the costs of compliance where there is no consumer risk.

Exemption for ‘sophisticated parties’

Clause 8 of the Bill provides agents acting on behalf of ‘sophisticated owners’, for transactions in relation to non-residential and non-rural property, with an exemption from the Act. Generally speaking commercial real estate agents will continue to be required to be licensed. However, when a commercial real estate agent is acting for the sale of non residential property on behalf of a ‘sophisticated party’, and the transaction is over the threshold amount (which will be prescribed by regulation), or the parties to the transaction own real property and the total estimated value of the real property each party owns is over the threshold amount, the agent will be exempt from the Act.

In addition, with respect to the letting of property and collecting of rents, when an agent is performing these functions for a ‘sophisticated owner’ (an entity that owns real property and the total estimated value of the real property is over the threshold amount prescribed by regulation), the agent will be exempt from the Act.

It is considered that this proposal benefits industry by significantly reducing red tape for transactions involving sophisticated property owners, who better understand the risks associated with property transactions and who do not need to be afforded the consumer protection elements of the legislation.

Limited exemption from the residential property sales provisions

Exemption from Part 7 for residential sales contracts involving ‘sophisticated parties’

Clause 160 ensures the residential property sales provisions (Part 7 of the Bill, which provide a statutory cooling-off period and require a prescribed statement to be included in particular contracts for the sale of residential property) do not apply the following contracts:

- a contract if the buyer is a publicly listed corporation or a subsidiary of a publicly listed corporation; or
- a contract if the buyer is the State or a statutory body; or
- a contract if the buyer is purchasing at least 3 lots at the same time, whether or not in the 1 contract.

These ‘sophisticated parties’ are considered experienced in property transactions and do not require the benefit of the consumer protection provisions of the Bill. This proposal will benefit these ‘sophisticated parties’ by reducing the costs associated with providing a statutory cooling-off period and a statement in the contract that encourages buyers to obtain independent legal advice and an independent property valuation before signing.

Private treaty contracts entered into 2 days after an auction with a registered bidder

The Bill maintains the existing 5 day statutory cooling-off period but continues to provide that the statutory cooling-off period does not apply to contracts formed on a sale by auction. The Bill also removes application of the cooling-off period from private treaty contracts entered into within 2 clear business days after an auction, when the buyer was also a registered bidder at the auction. This will benefit industry by providing for circumstances

under which a contract for sale can be settled within shorter timeframes. This amendment will also benefit the auction process and industry and sellers of residential property. A buyer that is a registered bidder is likely to have conducted the relevant checks for the residential property as they were registered at the auction and prepared to purchase the property for a particular price. As such, it is considered that buyers will not be adversely impacted by the amendment.

Buyer's notification of termination during cooling-off

The Bill removes the requirement for a buyer to state in a termination notice the section of the legislation they are using to exercise their statutory cooling-off rights, when they are exercising these rights. The Bill also removes the requirement for the termination notice to be dated. These changes reduce red tape for buyers and remove unnecessary legislative obligations. This will also likely reduce any unnecessary litigation about whether or not a buyer appropriately exercised their cooling-off rights if they did not reference the relevant section of the legislation that provides these rights.

Disclosure requirements

Allow agents to disclose whether a reserve price has been set but not the reserve price

Consistent with the provisions of the PAMD Act, the draft Bill (clauses 213 to 216) imposes requirements and prohibitions on auctioneers and real estate agents in relation to representations about price. However, the Bill makes amendments to allow agents to disclose the fact that a reserve price has been set for residential property proposed for auction, but not the reserve price. As it is rare for an auction to be conducted without a reserve price, it is considered that most prospective purchasers would expect there to be a reserve price set at some point before the auction.

Provisions about the appointment of an agent

Appointment forms

Consistent with the PAMD Act, the Bill provides that a property agent must not act for a person (a client) to perform an activity (a service) for the client unless the client first appoints the agent in accordance with the requirements of the legislation. However, the Bill simplifies and streamlines the existing 'approved forms' for appointments by providing one approved form that can be used by any agent for any type of appointment (refer to Part 4 of the Bill including clause 104). The approved appointment form must contain the following information:

- a prominent statement that the client should seek independent legal advice before signing the appointment;
- state whether the appointment is a single appointment or a continuing appointment;
- state the service to be performed by the agent;
- state the fees, charges and any commission payable for the service;
- state when the fees, charges and any commission for the service become payable;
- state the expenses, including advertising and marketing expenses, the agent is authorised to incur in connection with the performance of each service or category of service;

- state the source and the estimated amount or value of any rebate, discount, commission or benefit that the agent may receive for any expenses that the agent may incur in connection with the performance of the service; and
- state any condition, limitation or restriction on the performance of the service.

Providing one approved form that can be used by any agent for any type of appointment will benefit industry by simplifying and streamlining the appointment requirements. Any additional information (which was previously required to be included in the approved form; resulting in multiple approved forms for appointments) that is required to be provided by an agent as part of the appointment is simply required to be provided in writing and in addition to the approved form. For example, consistent with the PAMD Act, if the appointment is in relation to an auction, the date set for the auction must be provided; however, this information is only required to be provided in writing as part of the appointment (clause 107) and not in an approved form.

Removal of requirement to state how services are to be performed

The Bill removes the requirement for a written appointment to state how services are to be performed. It is considered that the approved form requirements (refer to clause 104) ensure sufficient detail is disclosed to a client in relation to the service that is to be performed by the agent.

Removal of requirement for continuing appointment to state end date

The Bill removes the requirement for a continuing appointment to state the date the appointment ends. Continuing appointments are often used by agents that are providing property management or resident letting services to a client as these types of services are often on-going for an indefinite period of time. As such the requirement for an end date to be specified is sometimes impractical. As noted below the Bill also provides that particular types of appointments, including a continuing appointment, may be terminated by either party giving a minimum of 30 days notice to the other party. As such, it is considered that providing an end date for a continuing appointment is not necessary to protect consumers.

Other requirements for appointments—expressing commission as a percentage

Consistent with the PAMD Act, the appointment of an agent must also, if the appointment is for a service that is the sale or letting of property or the collecting of rents and commission (expressed as a percentage of an estimated sale price or amount of rent to be paid or collected) is payable for the service, state that the commission for the service is worked out only on the actual sale price, actual rental, or actual amount of rent collected (whichever is applicable to the appointment (clause 105)).

Other requirements for appointments—sole or exclusive agencies

Consistent with the PAMD Act, the Bill requires particular information about sole or exclusive agency appointments to be discussed with and provided to clients when entering into an appointment for the sale of residential property.

More specifically, the Bill requires a sole or exclusive agency appointment to state in writing, whether the appointment is for a sole or exclusive agency and the day the appointment ends

(sole or exclusive agency appointment can only be for a maximum of 90 days). In addition, consistent with the PAMD Act, a sole or exclusive agency appointment may continue under an open listing (which can be ended at anytime by either party) at the end of the term of the appointment, if this is provided for and agreed to by the client in the initial written appointment (clause 108).

However, while the PAMD Act requires this information to be provided in the approved form, under the Bill, this information must simply be provided in writing as part of the appointment. This change supports the amendments to simplify and streamline the existing approved appointment forms by establishing one form that contains only the information that is relevant to all appointment types (discussed in more detail above).

Removal of requirement to bring client's attention to particular information in the approved form when being appointed as a sole or exclusive agent

To reduce red tape, the Bill removes the requirement for an agent to specifically bring to the client's notice the information in the form of appointment about the effect of and differences between an open listing sole agency or exclusive agency, if the appointment is for the sale of real property or sale of an interest in real property.

This obligation is considered unnecessary as, consistent with the PAMD Act, the Bill (clause 103) requires agents to, before an appointment for a sole or exclusive agency is signed, discuss with the client:

- whether the appointment is to be for a sole agency or an exclusive agency; and
- the proposed term of the appointment and if the appointment is in relation to the sale of residential property (other than a commercial scale appointment) the client's entitlement to negotiate the term of the appointment up to a maximum term of 90 days; and
- the consequences for the client if the property is sold by someone other than the agent during the term of the appointment.

Similar to the PAMD Act, the Bill requires property agents that may be appointed for a sole or exclusive agency to, before the appointment is signed, give the client a notice, in the approved form, that provides information about sole and exclusive agency appointments. However, while under the PAMD Act, this information was incorporated into the approved form for the appointment of a real estate agent (sales and purchase), the Bill requires a separate information sheet that provides clients with this information is required to be provided because under the Bill, there is only one approved form of appointment that contains only the information that is relevant to any type of appointment. Continuing to require information about sole or exclusive agency appointments in the approved form will assist agents in meeting their legislative obligations and ensure consumers continue to be well informed of the consequences and impacts of the different types of appointments that can be entered into with an agent for the sale of property.

Extension of maximum term of appointment for sole or exclusive agencies

The Bill extends the maximum term for a sole or exclusive agency appointment to 90 days (under the PAMD Act the maximum term is 60 days). Consultation processes on the draft Bill highlighted that, depending on market factors, reappointments are often required to finalise a property sale when the maximum term is 60 days.

Termination of an appointment

With respect to the termination of an appointment, the PAMD Act provides that a continuing appointment may be revoked on the giving of 90 days notice, or some lesser period (not less than 30 days) agreed by the parties. The Bill allows appointments, other than appointments for a sole or exclusive agency, to be terminated but only requires a minimum of 30 days notice to be provided.

With respect to sole or exclusive agency appointments, if the appointment is for a term that is more than 60 days (but not more than 90 days which is the maximum term for sole or exclusive agency appointments under the Bill), the Bill provides that either party may revoke the appointment by giving a minimum of 30 days notice. However the appointment must be effective for a minimum of 60 days.

The Bill also includes capacity for any appointment to be terminated sooner if both parties agree to an earlier termination date.

Assignment of appointments

The PAMD Act and draft Bill include provisions which provide for the assignment of appointments. The purpose of these provisions is to facilitate the sale of an agent's business by avoiding the need for the new agent that purchased the business to enter into a new written appointment with each existing client when they take over the agent's business.

However, the Bill includes amendments to simplify the assignment process by removing the PAMD Act requirement for a client to be informed at least 14 days prior to the assignment. Instead, the Bill requires the agent being appointed to inform clients that the appointment has been assigned by written notice within 14 days of the assignment. The written notice must state:

- the assignee's name and contact details;
- the address of the assignee's registered office;
- that the appointment has been assigned without changing the terms of the appointment; and
- that the appointment may be revoked by the client by giving at least 30 days written notice of the revocation to the assignee (in accordance with the amendments in relation to the termination of an appointment discussed in more detail below).

The amendments in the Bill (discussed in more detail above) to allow an appointment (other than an appointment for a sole or exclusive agency) to be cancelled by either party giving a minimum of 30 days notice, unless both parties agree to an earlier termination date, ensures clients that are dissatisfied with the assignment may terminate the appointment.

This amendment will particularly benefit the sale of a management rights business and the assignment of a resident letting agent's appointments (which can be in the hundreds) to the new agent by ensuring that there is no interruption to the provision of service to tenants or property owners.

Regulation of resident letting agents

Allow resident letting agents to manage more than one building complex

The PAMD Act currently imposes a limitation on the number of building complexes a resident letting agent can manage by requiring the chief executive to as a condition of the licence, limit the performance of the activities of a resident letting agent to 1 or more stated building complexes. The chief executive may only authorise the resident letting agent to perform the activities in more than 1 building complex if the buildings are contiguous and the resident letting agent has the approval of each appropriate body corporate to carry on a business of letting lots, and collecting rent for lots, in the complex.

These provisions of the PAMD Act are onerous for resident letting agents and significantly limit their business practices. The *Body Corporate and Community Management Act 1997* (BCCM Act) will continue to contain a number of provisions which regulate resident letting agents and protect consumers. In addition, resident letting agents will continue to be subject to terms of management rights agreements with the relevant body corporate. For example, under the BCCM Act, a person is a letting agent for a community titles scheme if the person is authorised by the body corporate to conduct a letting agent business for the scheme. As such, the Bill allows resident letting agents to operate more than one building complex to provide business flexibility for resident letting agents. This will benefit industry by substantially reducing red tape and the current limitations on operating more than one complex.

No longer require resident letting agents to reside on-site

The PAMD Act provides that an individual is eligible to obtain a resident letting agent licence for a building complex only if the individual, amongst other things, satisfies the chief executive that the individual will reside in and have their registered office in one of the building complexes they have body corporate approval to manage. In addition, the PAMD Act provides a significant penalty if a resident letting agent does not reside permanently in the building complex.

The Bill removes the requirement for a resident letting agent to live on-site to be eligible for a licence as well as the associated penalty for not living on-site. This will benefit industry by substantially reducing red tape and the current limitations on operating more than one complex. As stated above, resident letting agents will continue to be subject to the requirements provided for in their individual management rights agreement with the relevant body corporate.

Remove requirement to give evidence of body corporate approval with licence application

The Bill removes the requirement for prospective resident letting agents to evidence body corporate approval when applying for a licence. In effect, a prospective resident letting agent will no longer be required to have or provide evidence of body corporate approval when applying for a licence. Particular requirements about body corporate approval to operate a resident letting agent's business will continue to be regulated through the provisions of the *Body Corporate and Community Management Act 1997*.

The removal of the requirement to evidence body corporate approval impacts on another existing requirement of the PAMD Act, that resident letting agents are required to satisfy the chief executive their registered office will be in one of the building complexes where they have body corporate approval to manage. As prospective resident letting agents will no longer be required to provide evidence of body corporate approval when applying for a licence, the chief executive will no longer have capacity to be satisfied of this requirement. As such, to ensure resident letting agents continue to be required to have their registered office in one of the building complexes they manage when this is no longer an eligibility requirement for a licence, a penalty has been introduced if a resident letting agent has body corporate approval to manage one or more building complexes and their registered office is not in one of those complexes.

Allow letting agents of a 'mixed use development' to obtain a resident letting agent licence

The Bill allows letting agents that have been appointed under a mixed use development scheme under the *Mixed Use Development Act 1993* to obtain a resident letting agents licence (refer to the definition of building complex in schedule 3). This reduces red tape and regulation for letting agents in mixed use developments that are required under the PAMD Act to obtain a real estate agents licence.

Lawyer's certificate requirements

Remove the requirement for a lawyer's certificate to be provided to waive cooling-off period

The PAMD Act provides that a person who proposes to enter into a relevant contract may only waive the cooling-off period by giving the seller a lawyer's certificate in the approved form. The lawyer's certificate must be signed and dated by the lawyer; state that the lawyer is independent of the seller, the seller's agents and anyone else involved in the sale; state that the lawyer has not received, is not receiving, and does not expect to receive a benefit for providing a service for the sale (other than professional costs payable by the buyer); and state that the lawyer has explained to the buyer the effect of a relevant contract (and agreement to waive the statutory cooling-off rights).

The provisions are intended to deter marketeers that may use pressure selling tactics and encourage buyers to obtain advice from a lawyer who will in turn receive a benefit from the marketeer (and therefore may arguably be acting in the best interests of the marketeer). However, it is considered that these provisions are unnecessary as the *Legal Profession Act 2007* also provides a framework for ensuring the appropriate conduct of legal professionals, including the standards for acting independently. In addition, it is considered that a buyer should not have additional obligations and costs imposed on them if they choose to waive the statutory cooling-off period, possibly as a means of negotiating a better purchase price for the property. As such, to reduce red tape and regulation, these provisions of the PAMD Act have not been included in the Bill.

Remove the requirement for a lawyer to provide a certificate of independence

The PAMD Act provides that if a prospective buyer engages a lawyer for the proposed purchase or purchase of a residential property, the lawyer must give the buyer a lawyer's certificate in the approved form. The lawyer's certificate must be signed and dated by the lawyer. The certificate must state whether the lawyer is independent of the seller, the seller's

agents and anyone else involved in the sale, or promotion of the sale, or provision of a service for the sale, of the property. The certificate must also state whether the lawyer has a business, family, or other relationship with any of those persons; and state whether the lawyer has received, is receiving, or expects to receive a benefit relating to the sale, or for promoting the sale, or for providing a service for the sale, of the property (other than professional costs and disbursements payable by the buyer).

However, it is considered that the provision of a certificate of independence from a lawyer is unnecessary as the *Legal Profession Act 2007* also provides a framework for ensuring the appropriate conduct of legal professionals, including the standards for acting independently. In addition, in the event a consumer was concerned about a conflict of interest amounting to professional misconduct, the consumer may consider making a complaint in relation to the conduct of the lawyer to the Legal Services Commission. As such, to reduce red tape and regulation, these provisions of the PAMD Act have also not been included in the Bill.

Remove unnecessary obligations imposed on licensees

Remove the requirement for principal licensees to display their licence at their registered offices

The Bill replaces the requirement to display a licence in a place of business with a requirement to keep copies of licences and registration certificates available for inspection at each place of business (clauses 79 and 145). While it is anticipated that many agents may continue to display a copy of their licence at their registered office, prescribing this requirement in the legislation and imposing substantial penalties for non compliance with the provision is considered unnecessary. This amendment will reduce red tape and regulation for industry.

Remove the requirement to provide photographs with licence applications

Under the PAMD Act applicants for particular types of licences may be required to provide, if requested by the chief executive, 2 recent colour photographs of the licensee that are of a size prescribed under a regulation, and certified (in the way prescribed under a regulation) as photographs of the licensee. However, the Office of Fair Trading does not currently issue licence identification cards that contain a photo of the licensee. As such, it is considered that this is an unnecessary obligation placed on applicants and the Bill removes this requirement.

Advising name of auditor

The Bill removes the requirement under the PAMD Act for an applicant for a licence (who intends to carry on the business under the licence and is required to keep a trust account) to advise, at the time of applying for the licence, the name and business address of an auditor appointed to audit the trust account. As a result, the Bill also removes the requirement for the applicant to give the chief executive evidence that the auditor has accepted the appointment as auditor.

The reason for removing this requirement from the licence application process is because when an application is made for a licence, the applicant does not have a trust account and therefore does not necessarily have an auditor yet appointed. Furthermore, this information is

not necessary for the purposes of processing the licence application and determining whether a person is an appropriate person to hold a licence.

Instead of requiring this information to be provided at the time of applying for a licence, the Agents Financial Administration Bill requires the name and address of the auditor (and evidence that the auditor has accepted the appointment as auditor) to be provided to the chief executive by a licensee within one month of the licensee opening a trust account and appointing the auditor.

This amendment will benefit industry by streamlining the licence application process and requiring notification of trust account auditor to be provided when appropriate.

Remove the requirement to provide evidence of active trading on renewal of licence

The Bill removes the requirement for a licensee who is renewing their licence to provide evidence to the chief executive of active trading under their licence for a period, and within the period, prescribed under regulation.

It is considered that in relation to the decision making process for a licence renewal, the requirement to satisfy the chief executive that the applicant has actively carried out the authorised activities in the prescribed period is not necessary for determining whether or not an applicant is an appropriate person to continue to hold a licence.

This amendment will benefit industry by reducing unnecessary red tape and streamlining the process for renewing a licence.

Remove the requirement for an employment register to be maintained

The Bill removes the requirement for a principal licensee to keep an up to date employment register, which, under the PAMD Act, was required to include the name of each employed licensee and registered employee; the activities a registered employee is authorised to perform; and other prescribed particulars. It is considered appropriate to remove the requirement for an employment register to be maintained as registered employees are only permitted to perform the activities that the licensee in charge of the business is authorised to perform (subject to any conditions the chief executive has placed on the registered employee's registration certificate). Furthermore, it is considered that the requirement to maintain an employee register is unnecessarily onerous on business.

Remove the 'notice of vacant land' requirements

The Bill removes the requirement for an agent to provide a proposed buyer with a written statement of vacant land, and the associated capacity for a buyer of land to within 6 months of entering into the contract, avoid a contract for the sale of the land if the buyer has not been given the required notice and prescribed information. In practice, these provisions require agents to provide written notice to mainly potential purchasers of industrial, commercial or retail land explaining that they cannot build residential dwellings on that land. While intended to protect consumers, this notice of vacant land requirement adds extra regulation, time and money to property transactions that are generally being undertaken with parties that are well aware of the zoning and development limitations associated with a piece of vacant land. The removal of this requirement will reduce legislative obligations for industry, particularly as

this type of information is related to town planning matters of which agents are not required to be formally trained in under the PAMD Act.

Remove the notice requirements when selling a resident letting agent business

The Bill removes the requirement for a real estate agent (appointed as a business broker) to give notice about the sale of a resident letting agent's business to prospective buyers of the business. The requirements under the PAMD Act were intended to ensure prospective buyers of a resident letting agent's business are aware of the licensing requirements, which can impact significantly on their capacity to operate the resident letting agency for a body corporate. However, it is considered that imposing this requirement on agents is unnecessary as a legal adviser engaged by the buyer to provide advice should include in their advice to their client, information about their licensing and other contractual obligations.

Remove unnecessary obligations imposed on businesses

Allow a licensee or registered salesperson to be 'in charge' of an other place of business

The Bill allows a licensee or registered salesperson to be 'in charge' of a place of business that is not the businesses registered office. Under the PAMD Act, only a licensee can be in charge of a place of business or registered office. However, requiring a licensee to be in charge at each place of business is not consistent with contemporary business practice.

Many types of transactions are increasingly being made using the internet and technological developments will continue to change the way in which business practices are undertaken. As such, the requirement for place-based legislation becomes increasingly less significant and unduly restrictive, particularly when the Bill (consistent with the PAMD Act) also requires a real estate agent who is a principal licensee to take reasonable steps to ensure each real estate salesperson employed by the agent is properly supervised and complies with the legislation. In addition, removing the requirement for a licensee to be on location at each place of business does not remove the principal licensee's (or licensee in charge's) obligation to ensure their organisation and employees fully comply with the legislative requirements, including those which relate to maintaining trust accounts.

Remove the requirement for directors to be licensees

The Bill removes the requirement under the PAMD Act on corporations to have a licensee as a director, provided that a person in charge of the corporation's business is licensed.

Improve the operation of the legislation and clarify particular provisions

Improve the operation of the legislation

Immediate suspension for failure to file an audit report

An important consumer protection element under the PAMD Act is that licensees operating trust accounts must submit periodic audit reports to the chief executive. However, if a licensee fails to submit an audit report, the chief executive is unable to take immediate action to stop the licensee operating the trust account until such time as a conviction has been recorded for the failure to file, and the licensee continues to fail to provide the audit report.

This approach to regulating the provision of audit reports by licensees increases the risk of significant delay in detecting (and preventing) defalcations and other issues associated with a trust account.

Accordingly, the Bill includes provision for a licence to be immediately suspended if a licensee fails to submit a required audit report.

Use of independent contractors and on-hire labour in the real estate industry

The use of independent contractors and on-hire labour in the real estate industry is becoming more prevalent given the potential tax and cost minimisation advantages for real estate agencies.

The use of independent contractors and on-hire labour presents a number of problems and there have been a number of business models that have been investigated by the Office of Fair Trading. For instance, when using independent contractors, the consumer has difficulty identifying who they are dealing with. From a compliance perspective, problems may arise in respect to dual appointments, the keeping of trust monies and claims against the fund. In particular, problems arise in identifying the party or entity that should be held accountable.

Industry stakeholders have also raised concerns about the use of independent contractors. Industry stakeholders are primarily concerned with the real estate industry being brought into disrepute as novice salespersons are primarily being used by on-hire agencies. There are also concerns about unfair working conditions and 'sham' contracting arrangements.

As such, legislative amendments have been made to clarify the position regarding the use of independent contractors and on-hire labour. While the definition of 'employ' is already wide, the definition has been amended to clarify that 'employ' also includes directly engaging someone as an independent contractor, and engaging on-hire labour. Additionally property agents are prohibited from directly employing, as an independent contractor, a person as a property agent or real estate salesperson unless that person holds a property agent licence.

Register of enforceable undertakings

Consistent with the PAMD Act, clause 201 of the Bill provides capacity for the chief executive to publish the register of enforceable undertakings on the Department's website. An enforceable undertaking is a written promise by a licensed business not to keep breaching the legislation. This is one of several enforcement options available to the chief executive under the PAMD Act and the Bill.

However, while the PAMD Act provides that the register of enforceable undertaking may be inspected by a member of the public, at a fee, the Bill enables the chief executive to publish the register on the Department's website. This amendment will increase public accessibility to information in relation to enforceable undertakings entered into by businesses and individuals. As such, it is considered that this will improve licensee compliance with the legislation and consequently consumer protection.

Trust account payments made within 3 days

The PAMD Act provides that a property developer must pay a part payment directly to the public trustee, a law practice, or a real estate agent within 3 business days after the amount is paid by the buyer.

However, this approach differs from the approach taken to paying deposit monies received to purchase a proposed allotment under the *Land Sales Act 1984*, which also regulates transactions involving property developers, with an objective to protect the interests of consumers purchasing property 'off the plan'. More specifically, the *Land Sales Act 1984* does not contemplate the depositing of the funds within a timeframe (such as within 3 business days as provided for under the PAMD Act) but requires the monies to be paid directly to the Public Trustee, a law practice at its office in Queensland, a real estate agent, or a real estate agency.

As such, for consistency in the regulation of property developers and the depositing of part payments into trust, the Bill (refer to clause 162) requires part payments to be paid directly to the Public Trustee, a law practice at its office in Queensland, a real estate agent, or a real estate agency.

Allow training requirements to be approved by the chief executive as opposed to prescribed by regulation

Currently the PAMD Act provides that an individual is eligible to obtain a licence or registration as real estate salesperson only if the individual is at least 18 years and has the educational or other qualifications for a licence prescribed under a regulation.

However, prescribing training requirements by regulation is an administratively burdensome process as the course codes for training requirements can change frequently. As such, the Bill includes amendments to allow training requirements to be administratively approved by the chief executive. This approach will facilitate a timely response to changes in training packages and provide certainty to prospective licensees about what the training requirements are for particular licences. This amendment is also consistent with the approach taken under other Acts administered by the Office of Fair Trading that also require prospective licensees to undertake particular training to be considered eligible for a licence.

Introduction of Suitability, Checking, Reporting and Monitoring Reports (SCRAM)

Under the PAMD Act, criminal history checks on applicants for licences and registration certificates are currently undertaken at the initial application stage and at the renewal stage. However, renewal for a licence may occur annually or once every three years depending on the term of licence the applicant chose to apply for.

As such, applicants that obtain a licence that is valid for a one year may be required to pay a criminal history costs requirement more frequently (as this costs requirement is currently made on renewal of a licence) than those applicants that obtain a licence that is valid for three years.

The Bill introduces the ability for the Commissioner of Police to notify the chief executive of changes in the criminal history of a licence holder, a registration certificate holder and a

nominated substitute person in charge. This is done through Suitability, Checking, Reporting and Monitoring Reports (SCRAM), which are an automated process that allows the timely reporting of changes of criminal histories within the jurisdiction of Queensland.

Introducing regular SCRAM checks ensures the chief executive is notified of any changes in a relevant person's criminal history within Queensland since the person's initial application for a licence or registration certificate. Without this amendment convictions for serious offences may only be picked up through an investigation of a complaint or when the licence holder or registration certificate holder renews their licence or registration certificate.

The introduction of SCRAM will provide the chief executive with the flexibility to manage potential risks (by being alerted to changes in a person's criminal history prior to a licence/registration certificate being renewed or a complaint being made) and deliver a saving to licence holders and registered salespersons (by enabling the chief executive to reduce the frequency under which a full criminal history report is required for renewing licenses and registration certificates). For new applicants, the introduction of SCRAM adds an additional tool for ongoing suitability checking, but will not impose additional requirements on applicants.

Clarify particular provisions

Definition of residential property

The Bill replaces the definition of residential property that was provided for in the PAMD Act with a simple definition (clause 21) to improve the operation of the legislation. It is also anticipated that this amendments, coupled with the removal of the termination right for failure to comply with the former warning statement provisions (more information on this amendment is provided above), will reduce the level of litigation that has occurred in relation to the definition.

Clarify that an open listing can be ended at anytime by written notice

The PAMD Act and Bill (clause 20) provide that an open listing can be ended by either the seller or the selling agent at any time. The Bill clarifies that a written notice must be give to end the open listing.

Clarify that a separate appointment is not required for conjuncting agents

Clause 102 of the Bill clarifies that a separate appointment is not required for conjuncting agents. This amendment will benefit industry by providing clarity and ensuring appointments are entered into with a client only when necessary.

Disclosure of interest requirements apply to the sale of a house and land package

The Bill clarifies (through clauses 157 and 158) that the disclosure of interest provisions apply to the sale of a house and land package. As such, property developers marketing house and land packages will be required to disclose particular information to a prospective buyer, including the amount, value or nature of any benefit any person has received, receives, or expects to receive in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property. This information will be required to be

disclosed by a property developer whether or not the benefit being paid is passed as a cost to consumers through the land contract or the building contract.

This proposal is anticipated to benefit prospective purchasers. By clarifying that agents and developers are required to disclose marketing, advertising and other costs, for the sale of residential building contracts, buyers will be better informed of the true value of their purchase or investment. Ensuring these costs are disclosed may encourage prospective purchasers to obtain an independent valuation and to conduct due diligence before entering into the contract. As such, it is anticipated that prospective purchasers are more likely to be aware of the true value of the proposed dwelling and property before entering into the relevant contracts.

Clarify that the full name of the person or entity receiving a benefit is to be disclosed

The Bill clarifies (through clause 157(1)(c) and clause 158(1)(c)) that the full name of the person or entity who has received, receives or expects to receive any benefit is required to be disclosed in the approved form. This amendment supports the policy intention of the provision and ensures transparency in the disclosure of interests to buyers.

Clarify that bank guarantees are excluded from the trust account provisions

Clause 161 of the Bill clarifies that bank guarantees (and like instruments securing performance of a contractual obligation), are excluded from the trust account provisions that apply to property developers.

Price guides at auction are banned

The Bill (clauses 214 and 216) clarifies that a price guide for a property to be sold by auction is not to be disclosed, whether in advertising, when asked by a potential bidder, or otherwise.

The statutory cooling-off period applies to an option contract but not the subsequent contract

The Bill clarifies that the statutory cooling-off period only applies to an option contract and not the contract formed when the option is exercised, but only when the buyer is the same party for both the option contract and the subsequent contract. This will significantly reduce red tape for residential property sales through option contracts and provide greater certainty to industry, without adversely impacting on buyers. Importantly, buyers will continue to be provided with one statutory cooling-off period.

Clarify the non application of the maximum term for sole and exclusive agencies to a unit being sold in connection with a management rights (resident letting agency) business

The Bill clarifies that the maximum term of a sole or exclusive agency appointment does not apply to the sale of a unit that is associated with the sale of a Management Rights business because the transaction is commercial in nature and typically occurs over a longer period of time than most residential property sales (refer to the definition of a 'commercial scale appointment' in Schedule 3).

Suitability of corporations

The PAMD Act provides that a corporation is not suitable to hold a licence if an executive officer of the corporation is convicted of a serious offence. The Bill retains this suitability criteria but also clarifies that a corporation is not suitable to hold a licence if the corporation itself is convicted of a serious offence. This is because there are times where a court will convict a corporation that holds a licence (and record the conviction), but not convict the executive officers of the corporation. This amendment is considered a clarification of the existing policy about what makes a corporation suitable to hold a licence provided for under the PAMD Act.

Alternative ways of achieving policy objectives

A number of alternative ways of achieving the policy objectives have been considered. In addition, all submissions and proposals put forward by stakeholders during the public consultation process for the red tape reduction review that was conducted in early 2013 were considered in detail. Proposals raised by stakeholders that were consistent with the objectives of the review, to reduce red tape and regulation without adversely impacting on consumers, were largely supported and are reflected in the provisions of the Bill.

A preliminary impact assessment of the proposals reflected in the Bill as well as alternatives to these proposals, including maintaining the status quo and adopting interstate approaches, was conducted. The alternative of maintaining the status quo was not supported as this alternative was considered to be inconsistent with Government priorities and the objectives of the red tape reduction review. The appropriateness of adopting interstate approaches in Queensland was also assessed. However, interstate approaches are largely inconsistent and many were not considered appropriate for the Queensland regulatory framework.

The options and recommended approaches to licensing and regulation that were outlined in the national *Decision Regulation Impact Statement Proposal for national licensing of the property occupations* (the Decision RIS) were also considered as alternative ways of achieving the policy objectives. This Decision RIS was informed by extensive consultation and included a comprehensive assessment of the impacts of various alternatives. To facilitate the potential transition of property occupations to the national licensing and legislative regime, if this regime is introduced in Queensland, recommendations of the Decision RIS that were considered appropriate for Queensland's property industry have been adopted. For example, the Decision RIS supported an exemption from the legislation for large scale non-residential property transactions and for particular transactions between related entities, and did not support a separate licence for rural property work. The Bill includes provisions that implement these exemptions and also removes the separate licence for rural property work (the pastoral house licensing categories). Instead, rural property is included as a function of a real estate agent's or auctioneers licence.

Estimated cost for government implementation

The government will incur costs in implementing the split of the PAMD Act and the additional amendments to reduce red tape and regulation for industry.

For example, the split of the PAMD Act into four separate pieces of legislation, three of which will relate to the licensing of particular industries, will require the development of a new licensing framework. This fundamental change will also require new data systems and business processes to be developed for the new licensing categories. In addition, a change management process will also need to be developed to seamlessly migrate existing licensees into the new licensing, data and business process system. This transition will impose costs on the government.

The repeal of the PAMD Act, the changes to the licensing system, and the red tape reduction reforms require substantial amendments to be made to the existing information provided to the public about the legislation. For example, the approved forms, information provided on the Office of Fair Trading website, and other related publications will need to be amended and updated. In addition, the scripts provided to the public call centre, Smart Service Queensland, will need to be largely redrafted to ensure the call centre is able to provide the community with accurate responses to any queries that are raised. Significant staff training costs and changes to the complaint management system will also be associated with the implementation of the Bill.

Finally, the government will incur costs in delivering information and education services to assist stakeholders including existing licensees in understanding their rights and obligations following the changes to the Act. A substantial communication programme will be undertaken (comprising of updates to the website features and content, social media messaging, a series of media releases, editorials and articles for trade journals and industry publications, electronic alerts to licensees, publications and direct mail-outs) to ensure existing licensees are informed of the changes to the licensing framework and existing legislative requirements.

All expenditure associated with implementing the split of the PAMD Act and the red tape reduction proposals will be met from existing appropriations.

Consistency with fundamental legislative principles

The Bill is generally consistent with the fundamental legislative principles. The majority of the potential breaches (addressed below) of the fundamental legislative principles affected by the Bill are consistent with those which were identified and addressed in the establishment of the PAMD Act. However, some potential breaches (identified below where relevant) are being introduced through amendments in the Bill.

Does the Bill have sufficient regard to rights and liberties of individuals?

Legislative Standards Act 1991, section 4(3)(a) – legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review

Chief executive must consider suitability of applicants, licensees and registered employees (established under the PAMD Act and provided for in the Bill)

Part 2, Division 8 of the Bill provides that the chief executive must consider the suitability of a person including their criminal history, their character and the character of the person's business associates when deciding whether or not the person is a suitable person to hold a licence. Suitability must also be considered by the chief executive for corporations. However, this approach may be considered inconsistent with fundamental legislative principle of ensuring the legislation has sufficient regard to rights and liberties of individuals, which depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

The potential breach of the fundamental legislative principles is considered justified because the character of a person, their criminal history and the character of a person's business associates are useful indicators by which to judge if a person is suitable to hold a licence. Further, the legislation provides express and relevant criteria for the chief executive to make a decision about a person's suitability. Part 2, Division 8 also sets out express and relevant criteria that the chief executive must consider in determining if a person is a suitable person to be issued a registration certificate.

Eligibility for a licence and age discrimination (established under the PAMD Act and provided for in the Bill)

Part 2, Division 9 and Part 5, Division 5 of the Bill provide that the chief executive must consider the eligibility of a person to hold a licence or registration certificate, including whether the person is over the age of 18. This age discrimination is justified on the basis that it provides protection for consumers by ensuring that prospective licensees and registered employees have adequate judgement and capacity to carry out their authorised activities. Consumers expect to deal with licensees and registered employees that have the necessary maturity, judgement and capacity given the pecuniary nature of the transactions involved in the purchase, sale, exchange and letting of property.

The potential breach is further justified as the criteria for determining eligibility are explicitly defined in the legislation and this criterion is considered necessary to ensure that licensees and registered employees can adequately perform their duties.

Furthermore, the administrative powers of the chief executive to consider applications for licences and registration certificates are sufficiently defined and reviewable by the Queensland Civil and Administrative Tribunal (QCAT).

The Bill also allows the chief executive to place conditions on licenses and registration certificates (clauses 54 and 129), and to suspend licences and registration certificates (clauses 76 and 142). While this may adversely affect the rights and liberties of individuals, the

imposition of conditions and the suspension of licences and registration certificates in particular circumstances protects consumers. Additionally, the administrative powers of the chief executive are sufficiently defined and are reviewable by QCAT.

Legislative Standards Act 1991, section 4(3)(b) – legislation should be consistent with principles of natural justice

Immediate action (cancellation, suspension or amendment) without hearing (established under the PAMD Act and provided for in the Bill)

Clauses 77 and 143 of the Bill provide the chief executive with the power to cancel a licence or registration certificate and without giving the holder an opportunity to make representations as to why the licence or certificate should not be cancelled.

This may be considered a breach of the fundamental legislative principals as immediate cancellation denies the holder of the licence or registration certificate natural justice. However, the inconsistency with the fundamental legislative principle is justified on the grounds that immediate cancellation is limited to the most serious of instances that could cause the greatest detriment to consumers. In particular, a licence may only be cancelled under clause 77 if the licensee is convicted of a serious offence; where the licensee is an individual, if the licensee is an insolvent under administration; or where the licensee is a corporation, if the licensee has been wound up or deregistered under the Commonwealth's *Corporations Act 2001* (Corporations Act). For a registration certificate, the certificate may only be cancelled under clause 143 if the employee is convicted of a serious offence. The happening of any of the events goes to the very core of a licensee's or registered employee's suitability to perform the activities authorised by the licence or registration certificate. The immediate cancellation of the licence or registration certificate prevents the likelihood of detriment, or further detriment, to consumers.

It should also be noted that the cancellation of a licence or registration certificate does not indefinitely prevent the licensee or employee from applying for a new licence or registration certificate. However, the person must meet the suitability and eligibility requirements. Additionally, the Bill does not prevent a licensee or registered employee from seeking judicial review of the decision.

Clause 71 and clause 138 also provide the chief executive with capacity to take immediate action without hearing and amend the conditions of a licence or registration certificate. This removes a licensee or registration certificate holder's right to make a submission before a licence or registration certificate is amended on the chief executive's initiative. However, it is considered appropriate for the chief executive to have capacity to immediately amend the conditions to:

- a. for a licence—avoid potential claims against the fund or to ensure compliance with the relevant Acts, as to not comply could result in significant consumer detriment; or
- b. for a registration certificate—ensure compliance with the relevant Acts, as to not comply could result in significant consumer detriment.

Inconsistency with the principles of natural justice may also be raised in relation to the immediate suspension of licences and registration certificates (clauses 76 and 142) as there is no prior notification or 'show cause' process. However, a right of review is available to

QCAT if the decision has been made by the chief executive to immediately suspend a licence or registration certificate. In addition, immediate suspension of a licence or registration certificate is limited to specific circumstances and is considered necessary to prevent the likelihood of detriment, or further detriment, to consumers.

Limiting the period within which a prosecution or proceeding may be started (established under the PAMD Act and provided for in the Bill)

It is also arguable that clause 225, which imposes time limits on the commencement of proceedings and allows the prosecution to elect for an indictable offence to be heard summarily on indictment, is inconsistent with the principles of natural justice.

However, the time limits within which to commence a proceeding under the Bill are reasonable and necessary to provide certainty for licensees about when the risk of prosecution for an alleged breach ends. Time limits are used to create certainty for parties in other proceedings, for instance, the *Limitations of Actions Act 1974* provides statutory limits for commencing civil actions.

Although the prosecution may elect for an indictable offence to be heard summarily, the person charged with the indictable offence may still ask, at the start of a summary proceeding, that the charge be prosecuted on indictment. If the person does make the request, the magistrate must not decide the charge as a summary offence and must proceed by way of a committal proceeding.

Notice of requirements for licence or registration certificate application

Clause 252 provides that applications for the issue of a licence or registration certificate made under the repealed Act but not yet decided before the commencement of the clause must be decided under the new Act. The same approach applies to deciding applications in relation to applications for the renewal of a licence or registration certificate, amendment of conditions of a licence or registration certificate, appointment of a substitute for licensees and registration certificates holders that are in charge (clause 241) and the restoration of expired licences or registration certificates (clause 253).

It is arguable that this approach for deciding applications made before the commencement is inconsistent with the principles of natural justice, which includes a person's right to know the criteria necessary to satisfy an entity's requirements in a particular subject area. However, the criteria for the applications under the repealed Act and the new Act are largely consistent and, importantly, there are no additional criteria for applications under the new Act. The only differences in the criteria under the new Act are a reduction in requirements for applicants. For example, for the issue of a licence, there is no longer a requirement for particular applicants to advise the name of the auditor appointed to audit their trust account. For this reason, it is considered appropriate to decide, under the new Act, any undecided applications made before the commencement.

Legislative Standards Act 1991, section 4(3)(d) – legislation should not reverse the onus of proof in criminal proceedings without adequate justification

Prohibitions from making false and misleading representations about property (established under the PAMD Act and provided for in the Bill)

Clauses 209 and 212 of the Bill prohibits a licensee, registered employee or marketeer 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 the person accused of false or misleading representations. The reversal of the onus of proof is justified on the basis that knowledge about the reasonableness or otherwise of the representation is information which is peculiarly within the knowledge of the person who made the representation, and would otherwise be difficult to establish.

Stopping particular conduct (established under the PAMD Act and provided for in the Bill)

Clause 185 allows QCAT, on the application of the chief executive, to prohibit a marketeer from engaging in conduct that is or is likely to be a contravention of clauses 207, 208, or 209 (misleading or unconscionable conduct by a marketeer). QCAT may make the order without providing notice to the marketeer but, in that case, must allow the marketeer a reasonable opportunity to show cause why the order should not be confirmed. This constitutes a reversal of the onus of proof.

In this case, the reversal is justified because of the serious nature of the offence and impact on consumers if a marketeer engages in misleading or unconscionable conduct or makes false representations. These are instances in which a purchaser can stand to suffer losses of hundreds of thousands of dollars. If a marketeer misleads consumers, provisions must be enforced to provide consumer protection by stopping any conduct that contravenes this Bill. Therefore, it is justifiable that the onus of proof falls upon the marketeer to provide evidence and dispute any orders made by QCAT.

Entries in documents (established under the PAMD Act and provided for in the Bill)

Clause 224 of the Bill provides that an entry in a document kept by or belonging to a licensee is evidence that the entry has been made by or with the authority of the licensee. The provision reverses the onus of proof by requiring the licensee to prove that an entry in a document has not been made by the licensee or with the authority of the licensee. However, it is a reasonable assumption made for the purpose of procedural efficacy to assume that entries in documents in the possession of the licensee or belonging to the licensee have been made with the authority of the licensee, particularly given that evidence related to the authorship of entries in documents is likely to be within the knowledge of the licensee.

Responsibility for acts of representatives (established under the PAMD Act and provided for in the Bill)

Clause 226 provides that an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission. The reversal of the onus of proof is justified on the grounds that the information relating to the

exercise of reasonable diligence would be peculiarly within the knowledge of the licensee and would otherwise be difficult to establish.

Legislative Standards Act 1991, section 4(3)(f) – legislation should provide appropriate protection against self-incrimination

Person must answer particular questions/public examinations (established under the PAMD Act and provided for in the Bill)

Clause 184 of the Bill abrogates the privilege against self incrimination by requiring a person to answer questions during a public examination. Abrogating this privilege may be viewed as being inconsistent with the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals. However this provision is considered justified as the questions posed are particularly in the knowledge of the persons to whom they are directed and it would be difficult to establish an answer to the question by any alternative evidential means. Further the clause limits the use of the information, so that the answer is not admissible in criminal prosecutions.

Fundamental legislative principle issues not listed in the Legislative Standards Act 1991 – abrogation of common law rights must be justified

Right not to be defamed (relevant provisions in the PAMD Act and in the Bill)

Clause 230 allows the Minister or chief executive to make or issue public warning statements or information statements that may identify individuals. These public statements may have an adverse affect on individuals. However, before making a statement, the Minister or chief executive must be satisfied that it is in the public interest to do so. Accordingly, the inconsistency with the fundamental legislative principle is justified on the grounds that it is in the public interest to allow the making of warning and information statements for the protection of consumers.

A particular concern may be raised in relation to public statements about business practices regulated under the Bill that are unfair and public statements naming persons who engage in these unfair practices. This is because, unlike making a public statement about disciplinary proceedings or the commission of an offence, determining what constitutes unfair business practices is subjective and has greater potential to adversely affect an individual. Additionally, information about disciplinary proceedings by QCAT and court convictions are already publicly available, whereas information concerning ‘unfair business practices’ is not. Nevertheless, the Minister or chief executive (noting that this power can not be delegated pursuant to clause 233) will only make a public statement if satisfied it is in the public interest to do so.

It should be noted that this power is common in consumer protection legislation. It is a vital power as public warning statements can protect consumers from committing large amounts of money or entering into transactions in which they would suffer detriment. In addition, information statements play an educative role in informing consumers about particular conduct or behaviour that may place consumers at risk. The power also alerts other licensees and registered salespersons to non-compliant behaviours. The public exposure of non-compliant licensees or salespersons also provides a compliance incentive to others working in the industry wishing to avoid such negative publicity.

It is a reserve power, not able to be delegated, and used only in the rarest of circumstances where it becomes apparent to the Minister or chief executive there is a demonstrable, tangible pattern of conduct or behaviour that may cause widespread detriment to consumers. An example of where its use may be considered is where the Minister or chief executive has strong evidence that consumers may suffer financial detriment and such loss may be considerable if a public warning statement is not issued.

Clause 231 provides that nothing in the Bill affects or limits any civil remedy that a person may have against a licensee or another person for any matter.

Publication of register of enforceable undertakings on department's website

Clause 201 of the Bill provides for the chief executive to publish the register of enforceable undertakings on the Department's website. An enforceable undertaking is a written promise by a licensed business not to keep breaching the legislation.

Under the PAMD Act, the register of enforceable undertaking could be inspected by a member of the public, at a fee. Providing the chief executive with capacity to publish this register on the department's website may be considered to be an abrogation of common law rights as the information contained in the register could be considered to defame a licensee and impact on their capacity to obtain future clients who would not have been likely to pay a fee to inspect the register if it was not readily available on the website. However, enabling the chief executive to publish the register on the Department's website will increase public accessibility to enforceable undertakings entered into by businesses and individuals and it is considered that this will improve licensee compliance with the legislation and consequently improve consumer protection.

Fundamental legislative principle issues not listed in the *Legislative Standards Act 1991* – abrogation of established statute law rights and liberties must be justified

Pastoral house licences

The inclusion of the activities currently undertaken by pastoral house licensees in the property agents licence category could be seen to adversely affect the rights of individuals who wish to be licensed to undertake these activities in the future. While existing pastoral house licensees will be transitioned to a property agents licence (with appropriate restrictions where necessary) without the need to undertake further qualifications, new applicants will need to hold qualifications consistent with undertaking all the activities of a property agents licensee. However the current restriction on pastoral house licensees selling and auctioning only rural property will be removed and they will be able to service a wider market. As such, the potential breach of the fundamental legislative principle is considered justified.

Assignment of appointments

Clause 113 differs from the PAMD Act in that it removes the requirement for the client to agree to an assignment of an appointment. It is arguable that this amendment reduces the client's existing statutory rights and as such breaches the fundamental legislative principle that legislation have sufficient regard to the rights and liberties of individuals.

However, it is considered that the inclusion of a requirement for the newly appointed agent to notify the client of the assignment within 30 days, coupled with the introduction of a statutory right to terminate an assigned appointment by either party providing a minimum of 30 days notice, mitigates any potential negative impacts associated with adversely affecting the existing rights of clients.

Removal of the application of the cooling-off provisions from private treaty contracts entered into within 2 business days after an auction, with a registered bidder

The PAMD Act and draft Bill provide a statutory cooling-off period and outline the process under which a buyer may exercise their cooling-off rights. Currently, the cooling-off period, for a contract for the sale of residential property (other than a contract formed on a sale by auction) is a period of 5 business days, starting on the day the buyer receives a copy of the relevant contract from the seller and ending at 5p.m. on the fifth business day.

The Bill removes application of the statutory cooling-off period from particular contracts (refer to clause 160) including private treaty contracts entered into within 2 business days after an auction, when the buyer was a registered bidder at the auction. This proposal will benefit the auction process, industry, and sellers by providing for circumstances under which a contract for sale can be settled within shorter timeframes. This amendment is not anticipated to have a negative impact on consumers as it is considered that a buyer that is a registered bidder for an auction is likely to have conducted due diligence in relation to the residential property as they were ready to purchase the property at auction for a particular price.

Removal of the requirement to provide a lawyer's certificate if the buyer agrees to waive the cooling-off period

The PAMD Act provides that a person who proposes to enter into a relevant contract may only waive the cooling-off period by giving the seller a lawyer's certificate, in the approved form. The lawyer's certificate must be signed and dated by the lawyer and must state that the lawyer is independent of the seller, the seller's agents and anyone else involved in the sale; the lawyer has not received, is not receiving, and does not expect to receive a benefit for providing a service for the sale (other than professional costs payable by the buyer); and the lawyer has explained to the buyer the effect of a relevant contract (and agreement to waive the statutory cooling-off rights).

The purpose of this requirement under the PAMD Act is to enhance consumer protection for buyers of residential property by ensuring, as far as practicable, the independence of lawyers acting for buyers. The lawyer's certificate requirement was also intended to deter marketeers that may use pressure selling tactics then encourage buyers to obtain advice from a particular lawyer that in turn receives a benefit from the marketeer for providing advice that may not be in the best interests of the buyer but in the best interests of the marketeer.

However, this requirement is considered unnecessary as the *Legal Profession Act 2007* provides a framework for ensuring the appropriate conduct of legal professionals, including standards for acting independently. As such, the Bill removes the requirement for a lawyer's certificate to be provided if the buyer agrees to waive the cooling-off period.

It is considered that this proposal will reduce red tape and streamline the settlement process. In addition, obtaining legal advice prior to agreeing to waive the cooling-off period is the buyer's prerogative.

Removal of the requirement for a real estate agent to give notice of vacant land

The PAMD Act provides that the real estate agent must give to a proposed buyer (before the buyer signs the contract) a written statement (notice of vacant land that must be signed and dated by the agent and prospective buyer). This notice of vacant land must include:

- a clear statement that the use of the land for residential purposes is unlawful;
- a clear statement that if the buyer erects on the land a place of residence or otherwise uses the land for residential purposes contrary to law the buyer may commit an offence; and a named local government may be lawfully empowered to demolish the place of residence or other residential structure.

The consequence for failing to comply with the notice of vacant land requirements (including the requirement for a copy of the signed statement to be kept at the real estate agent's registered office and available for immediate inspection by an inspector) is a maximum of 200 penalty units or 2 years imprisonment. In addition, the legislation currently provides a further consequence as a buyer of land may (within 6 months of entering into the contract) avoid a contract for the sale of the land if the buyer has not been given the notice of vacant land that includes the prescribed information.

The Bill removes the requirement for an agent to provide a proposed buyer with the written statement of vacant land. While this may be considered an abrogation of established statute law rights and liberties, the potential breach is justified because it is considered that this requirement is unnecessarily onerous for agents, particularly as this type of information is related to town planning matters of which agents are not required to be formally trained in. This change will remove additional red tape for property transactions and the burden on real estate agents for matters in relation to which they have no qualifications (i.e. town planning competencies). While intended to protect consumers, these provisions of the PAMD Act add extra regulation, time and costs to property transactions that are usually being undertaken with 'sophisticated consumers' (as buyers that more frequently buy vacant land).

While the potential impacts of constructing a residential dwelling on vacant land are significant, it is considered that it is the buyer's responsibility to conduct due diligence checks prior to purchasing land, and to engage an independent solicitor that may provide them with advice about the impacts of their purchase and rights and obligations under the relevant contract.

Requirement of QCAT or court to make disqualification order when making order to cancel and individual's licence or registration certificate

Consistent with the PAMD Act, the Bill provides that QCAT or a court may make an order to cancel a licensee's licence or individual's registration certificate when it is considered appropriate. However, the Bill includes amendments to require QCAT or the court to also make an order disqualifying the licensee or registration certificate for a period when making an order to cancel a licence and the order is being made in relation to an individual. This potential abrogation of established statute law rights and liberties is considered justified because without this amendment, some individuals make a new application to the chief for a

licence not long after their licence was cancelled. While the chief executive has capacity to consider whether an applicant has had their licence cancelled when determining whether or not an individual is a suitable person to hold a licence, the period for which the individual may be considered unsuitable is ambiguous. It is considered more appropriate for QCAT or the court to determine an appropriate period for disqualification based on the circumstances of each case when making a cancellation order. To further clarify the legislation and reduce the administrative burden for the Office of Fair Trading, the Bill (clause 32) also provides that particular persons can not make an application during the disqualification period.

The requirement for QCAT or the court to make a disqualification order when making a cancellation order only applies when the cancellation order is being made in relation to an individual. This is because it is foreseeable that a corporation may be sold and have a change in executive officers (as contemplated in clause 32 of the Bill), which could result in the corporation being determined to be suitable to hold a licence. As such, the chief executive will continue to make decisions about a corporation that has had their licence cancelled and subsequently makes an application for a licence, on a case by case basis.

Fundamental legislative principle issues not listed in the *Legislative Standards Act 1991* – abrogation of rights and liberties from any source must be justified

Privacy issues and confidentiality rights (established under the PAMD Act and provided for in the Bill)

Part 2, Division 8 and Part 5, Division 4 provide that the chief executive may make investigations about particular persons, including by obtaining a criminal history report, to help the chief executive decide whether or not a person is suitable to hold a licence or registration certificate. The provision of a criminal history report to the chief executive impacts the privacy of the person who is the subject of the report.

Clause 40 also provides that the chief executive may obtain a criminal history report in relation to the business associates of an applicant for a licence, for the purposes of making investigations into the suitability of the applicant. Business associates are persons with whom the applicant or licensee carries on, or intends carrying on, business under the licence. Given the direct involvement of business associates in a licensee's business and their ability to influence business behaviour, investigations into the propriety of these people is a necessary step in ensuring the business operates in accordance with the law, and limits the risk of consumers being subject to any detriment in their dealings with the business. The chief executive does not need to acquire the business associate's consent to obtain the report. These infringements on privacy are justified on the basis that a criminal history report is necessary to ensure that only suitable persons become licensees. Given that the transactions property agents and registered employees are involved in are significant, it is considered reasonable to ask for details of a potential licensee's/registered employee's probity and propriety.

Clauses 44 and 126 provide a safeguard in relation to the confidentiality of the criminal history reports by providing that a public service employee performing functions under the Act must not disclose information about a person's criminal history and that the chief executive must destroy a written criminal history report as soon as practicable after considering a person's suitability.

In addition, in relation to personal information generally, the chief executive and public service employees are required to comply with the *Information Privacy Act 2009*, *Public Records Act 2002* and *Right to Information Act 2009*.

Fundamental legislative principle issues not listed in the *Legislative Standards Act 1991* – imposition of presumed responsibility must be justified

Imposition of liability for the acts of others (established under the PAMD Act and provided for in the Bill)

Clause 226 provides that an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done by the person, unless the person provides the person could not, by the exercise of reasonable diligence, have prevented the act or omission. While the clause imposes liability for the actions of others, it is justified on the grounds that it follows the general law of agency in that the principal is liable for the actions of his or her agent. The clause is also consistent with one of the main themes of the Bill in that a principal licensee must ensure their employees comply with the provisions, and are responsible for the acts and omissions of their employees.

Fundamental legislative principle issues not listed in the *Legislative Standards Act 1991* – proportion and relevance

The offences in the Bill continue the offences and associated penalties applying under the PAMD Act. Consequently existing licensees will be subject to the same offences as they were under the PAMD Act. The PAMD Act has been in force since the year 2000 and has acted as an effective deterrent against undesirable practices and in doing so has protected consumers including from financial loss in significant transactions. Additionally, there have been a substantial number of prosecutions and enforcement actions for breaches of the offence provisions. As such, the offences in the Bill are considered to be relevant and of an appropriate proportion to the legislative obligations.

Offences included in the Bill that were not established under the PAMD Act are discussed in more detail below.

New offence – Wrongful conversion and false accounts

Under the PAMD Act, it is an offence for a licence holder, and a person who acts as licence holder but who does not have a licence, to receive an amount belonging to someone else in the performance of a regulated activity and to dishonestly convert the amount to the person's own or someone else's use, or to dishonestly render an account of the amount knowing it to be false in a material particular. The Bill replicates this offence and extends the application of the offence to persons who hold a registration certificate or who act as a registration certificate holder but do not have a registration certificate.

It is considered necessary to broaden the application of this offence to enhance consumer protection by providing a significant deterrent for not only licence holders but also registered salespersons, or persons who acts as if they are registered salespersons, from wrongfully converting an amount, or dishonestly rendering an account of the amount, received for the performance of a regulated activity (refer to clause 206).

The maximum penalty applying to this offence under the PAMD Act for licence holders (and persons acting as licence holders without a licence) is replicated in the Bill for licence holders, registered salespersons and persons acting as licence holders or registered salespersons without a licence or registration certificate.

The maximum penalty is one of the highest penalties for an offence in the Bill; however, it is considered a significant penalty is required with respect to the handling of consumers' money to provide as a sufficient deterrent for inappropriately using amounts received for the performance of regulated activities that belong to someone else.

New offence – Offence to sell, lend or borrow registration certificate

The Bill includes a new offence (clause 137) for registered salespersons which relates to the selling, lending or hiring out of a registration certificate. The offence prohibits a registered salesperson from selling, lending or hiring out the real estate salesperson's registration certificate; notifying or advertising that the real estate salesperson's registration certificate is for sale, loan or hire to another person; or permitting or allowing someone else to hold out that they are the holder of the registration certificate issued to the real estate salesperson. The offence also prohibits a person from borrowing, hiring or purchasing a real estate salespersons registration certificate.

While this is a new offence for real estate salespersons, the offence (and the maximum penalty applying to the offence) is a direct replicate of an existing offence under the PAMD Act (which is also included in the Bill (clause 65)) about the selling, lending or hiring out of a licence. Given that the chief executive must consider the suitability and eligibility of each applicant for a registration certificate, in the same way the chief executive must consider the suitability and eligibility of each applicant for a licence, it is considered appropriate that a real estate salesperson should not be able to sell, lend or hire out their registration certificate to another person. This new offence is necessary to ensure that only persons who meet the prescribed suitability and eligibility criteria are authorised or purport to be authorised to work in the property industry.

New offence – Return of registration certificate when suspended or cancelled

The PAMD Act and draft Bill provide that it is an offence if a licensee does not return their licence when their licence has been suspended or cancelled, including for example as a result of a court or QCAT order. However, the PAMD Act contained an anomaly in that a similar offence did not apply to a person who held a registration certificate that was suspended or cancelled by a court. This anomaly has been addressed in the Bill and the Bill includes a similar offence but applies the offence to registered salespersons.

New offence – Return of licence or registration certificate for replacement

Under the PAMD Act, it is an offence not to return a licence or registration certificate for amendment of the conditions of the licence or certificate. This offence is replicated under the Bill (clause 72 and clause 139). However, the offence has also been extended in the Bill to apply to circumstances where the chief executive is replacing a licence or registration certificate because the chief executive is satisfied that a prescribed change has happened (for example, the licence or registration certificate holder's name has changed) which requires the

licence or certificate to be replaced. That is, clause 72 and clause 139 provide that it is an offence if a licence or registration certificate holder does not return the licence or certificate to the chief executive if the chief executive intends to amend the conditions of the licence or certificate or replace the licence or certificate due to the happening of a prescribed change which requires a replacement to be issued.

This extension of the existing offence under the PAMD Act is required to ensure that if the chief executive replaces a licence or certificate because the information contained on the licence or certificate requires changing the chief executive can require the licence or certificate holder to return the licence or certificate that contains the incorrect information. This is necessary to ensure that a licence or certificate holder will only be in possession of a licence or certificate that contains correct information. This provides protection for consumers.

The maximum penalty for the offence provided in clause 72 for licence holders and clause 139 for registration certificate holders is the same as the maximum penalty for the original offences under the PAMD Act.

New offence – resident letting agent’s registered office not in authorised building complex

The Bill removes the requirement for prospective resident letting agents to evidence body corporate approval when applying for a licence. However, this amendment also impacts on an existing requirement of the PAMD Act as to be eligible for a licence, resident letting agents are also required to satisfy the chief executive that their registered office will be in one of the building complexes where they have body corporate approval to operate a letting business.

To address this issue, the requirement for a resident letting agent to have their registered office in one of the building complexes they manage will be maintained as a conduct provision but this requirement will no longer be considered when determining whether or not a person is eligible for a licence. As a consequence, a new offence of a maximum of 200 penalty units has been created if a resident letting agent that has obtained body corporate approval to manage a building complex but does not have their registered office in one of the building complexes they manage (clause 86). This is a maximum penalty that is considered appropriate as it ensures that there will continue to be a consequence when the requirement to provide the chief executive with evidence of body corporate approval, to be eligible for a licence, is removed. In addition, the penalty level is consistent with the penalty levels for offences of a similar nature under the Act.

Does the Bill have sufficient regard to the institution of Parliament?

Legislative Standards Act 1991, section 4(4)(a) – allows the delegation of legislative power only in appropriate cases and to appropriate persons

Limited property agent’s licence (established under the PAMD Act and provided for in the Bill)

This Bill may affect the rights and liberties of individuals by providing the chief executive the discretion to issue a licence with conditions and limitations on the activities a licensee may perform (clause 28).

This may be considered an inappropriate delegation of legislative power as the criteria for a limited licence will be prescribed by regulation. However, the administrative power to grant a limited licence is justified as in some circumstances, it is appropriate to limit the authorisations of a licence, which in turn, limits the amount of training that is required to be eligible for that licence.

Training requirements approved by the chief executive

Unlike the PAMD Act which required training requirements to be prescribed by regulation, clauses 28, 45, 46 and clause 127 allow training requirements to be approved by the chief executive. It is arguable that this approach to imposing training requirements on prospective licensees and registered salespersons may contravene the principle that legislation have adequate regard to the institution of parliament by allowing an inappropriate delegation of legislative power. However, the breach is considered justified because the identifying details for training competencies (for example, the unit names and codes) change relatively frequently. If competencies are prescribed legislatively, its necessary to amend the legislation to reflect each minor change, and this may create temporary uncertainty in the interim about the competencies that prospective licensees need to complete to be eligible for a licence.

Instead of having training requirements be prescribed by regulation (consistent with the existing provisions of the PAMD Act), it is considered preferable and appropriate for the chief executive to approve training requirements, and to make adjustments as necessary to reflect changes in the nationally recognised training competencies. As is the current practice for other licences issued under legislation administered by the Office of Fair Trading, the particular training requirements will be published on the Office of Fair Trading website. This approach will facilitate a timely response to changes in training packages and provide certainty to prospective licensees about the specific training requirements for particular types of licences.

Regulation making power

Clause 9 provides capacity for other related entities to be exempt from the Act by regulation. This capacity was not part of the PAMD Act and may be considered an inappropriate delegation of legislative power. However, entities that deal in real property can often have complex structures. In addition, company structures evolve and it is difficult to predict what a company structure may be like in the future. As such, it is considered appropriate for there to be capacity for further exemptions to be prescribed by regulation. Consistent with the policy intention of clause 7, it is anticipated that these exemptions will be granted when the parties involved in the transaction are considered to be related. As such there is no agency relationship and the entities do not need the consumer protection elements (such as a statutory cooling-off period and access to the fidelity fund, which can impose significant costs on the parties) of the Act to apply.

Clause 236 of the Bill replicates the relevant heads of regulatory power under the PAMD Act. The matters to be prescribed under regulation are those matters usually prescribed under regulations, e.g. fees, minor offences, the keeping of records. As these are mostly administrative matters that can be subject to changes over time, it is appropriate that they are provided for in a regulation, rather than primary legislation. The regulation will comply with the requirements of section 4(5) of the *Legislative Standards Act 1992*.

It is also arguable that clause 236 does not confine the delegated power to prescribe fees to the recovery of costs of administering the licensing system. However, this clause replicates the provisions of the PAMD Act and it is considered appropriate for the legislation to confine the power to prescribe fees to a particular methodology—including the recovery of the costs of administering the licensing system because while a fee should have some relationship to the costs of administration, the setting of fees is ultimately a matter for government policy and can be subject to considerations other than cost recovery.

Elements of offences prescribed by regulation (established under the PAMD Act and provided for in the Bill)

Clauses 83 (Licensees to notify chief executive of changes in circumstances), 95 (Display and publication of licensee's name), 102 (Appointment) 149 (Real estate salespersons to notify chief executive of changes in circumstances), and 236 (Regulation-making power) allow elements of offences to be prescribed by regulation, which may be considered an inappropriate delegation of legislative power. However, it is considered appropriate that particular matters comprising these offences are prescribed by regulation, as they are administrative in nature and subject to change over time. For example, it may be necessary to prescribe an additional matter that a licensee should publish in an advertisement for their business (under clause 95) to ensure consumers are provide with enough information to make an informed decision about whether to engage a particular property agent. This approach allows flexibility in prescribing the offence elements and removes detail from the Bill.

Consultation

Red tape reduction review of draft Bills to split the PAMD Act

A comprehensive red tape reduction review of the draft Bills to split the PAMD Act into four separate pieces of legislation was conducted in 2013. The objective of the review was to identify opportunities to reduce red tape and regulation while maintaining effective consumer benefits.

The red tape reduction review was informed by a 6 week public consultation process that commenced in February 2013. Stakeholders were encouraged to make submissions to remove unnecessary legislative obligations. Over 86 stakeholder submissions were received and 38 of those submissions included more than 100 different proposals in relation to the regulation of property agents and resident letting agents.

Targeted consultation on an exposure draft of the amended Bill was also conducted in October 2013. Stakeholder feedback to the amendments was positive and further amendments to improve the operation of the provisions and the Act were subsequently made before the Agents Bills 2013 were introduced into the Legislative Assembly.

Proposal to split the PAMD Act

In 2008 the former Service Delivery and Performance Commission (SDPC) finalised its 'Report on the Review of Regulatory Reform (Phase 2) – *Property Agents and Motor Dealers Act 2000*'. The SDPC undertook extensive consultation during its review of the PAMD Act

including consultation with industry and the Queensland Consumers Association. The SDPC concluded that a significant reduction in the level of regulation could be achieved without adversely affecting consumers. The reductions were anticipated to be of significant benefit to the businesses affected by the Act and a number of the SDPC recommendations were considered likely to have positive benefits for consumers.

The former Government introduced draft Bills (the 2010 draft Bills) to implement this industry supported SDPC recommendation in 2010. Throughout the development of the 2010 draft Bills, a working group comprised of representatives of key industry associations was consulted. Broad public consultation was also conducted on the 2010 draft Bills. In addition, the former Legal Affairs, Police, Corrective Services and Emergency Services Committee (LAPCSESC) called for public submissions and held two public hearings to inform its examination of the 2010 draft Bills. The LAPCSESC made a number of recommendations including that the Agents Bills 2010 be passed. However, the 2010 draft Bills lapsed upon the dissolution of Parliament in 2012.

Results of consultation

Peak bodies that have been consulted during the development of the split Bills or in relation to the red tape reduction review of the draft split Bills include the:

- Auctioneers and Valuers Association of Australia;
- Australian Livestock and Property Agents Association;
- Australian Property Institute;
- Australian Resident Accommodation Managers' Association;
- Institute of Mercantile Agents;
- Motor Trades Association Queensland;
- Property Council of Australia;
- Property Sales Association of Queensland;
- Queensland Consumers Association;
- Queensland Law Society;
- Queensland Tourism Industry Council;
- Queensland University of Technology;
- Royal Automobile Club of Queensland;
- Real Estate Excellence Academy;
- Real Estate Institute of Queensland;
- Shopping Centre Council of Australia; and
- Urban Development Institute of Australia (Queensland).

Generally speaking, stakeholders strongly support the repeal and split of the PAMD Act into separate pieces of legislation. Strong stakeholder support for the amendments to reduce red tape and regulation was also received when targeted consultation was conducted. It is anticipated that industry will benefit from the red tape reduction amendments as these amendments will reduce costs for business without adversely impacting on consumers.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform or complementary to legislation of the Commonwealth or another State.

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Clause 1 states that the short title is the *Property Occupations Act 2013*.

Clause 2 states that the Bill commences on a day to be fixed by proclamation.

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

Clause 4 provides for the relationship of the Bill with the *Fair Trading Inspectors Act 2013*. The Fair Trading Inspectors Act enacts common provisions about the powers of inspectors appointed under particular Acts about fair trading. In accordance with clause 4(2), the powers that an inspector has under the Fair Trading Inspectors Act are in addition to, and generally do not limit any powers, the inspector may have under this Bill, unless the Bill otherwise provides.

Division 2 Exemptions

Clause 5 provides an exemption from Part 3 and Part 4 and Divisions 1 and 2 of Part 6 for particular auctions including auctions that are a sale made under a rule, order, or judgment of the Supreme Court or District Court; or auctions that are a sale made by a person obeying an order of, or a process issued by, a court, judge or justice, or the registrar of the State Penalties Enforcement Registry for the recovery of a fine, penalty, or award; or auctions that are a sale of an animal lawfully impounded and sold under the *Animal Care and Protection Act 2001* or another law; or particular types of sales conducted for charities, religious denominations, or organisations formed for a community purpose within the meaning of the *Collections Act 1966*.

Clause 6 provides an exemption from particular prescribed licensing requirements and conduct provisions of the Bill for administrators, receivers, liquidators and other controllers who may be appointed to manage or control a licensee's (or former licensee's) assets in specified receivership, administration, liquidation or personal insolvency processes.

The appointed administrator, receiver, liquidator or other controller is exempt from the prescribed provisions while performing a regulated activity in relation to the business they are appointed for, in accordance with any condition imposed on the relevant authorisation for the business.

Clause 7 provides an exemption from the Act for entities acting as a property agent for a related entity. More specifically, the exemption applies if an entity carries on the business of a property agent or resident letting agent only in relation to non-residential property assets of:

- another entity the majority of which is directly or indirectly owned by the exempt entity; or
- another entity, if the majority of both entities is directly or indirectly owned by the same persons; or
- another entity that directly or indirectly owns the majority of the exempt entity.

However, this exemption does not apply if the entity is a property agent or resident letting agent other than because of the business carried on by it in relation to the assets of the related entity. This clause also provides that the exemption only applies if, when carrying on that business as a property agent or resident letting agent for a related entity, the entity discloses in writing in any advertising or contract relating to the assets, its relationship to the owner of the assets.

Property owners performing the functions of a property agent or resident letting agent in relation to their own property are generally not regulated by the Bill. The Bill regulates persons acting as an agent for others for reward. The policy intention of this clause is to provide an exemption to related entities as the entity is not truly performing its functions as an agent for others for reward.

Clause 8 is intended to provide agents acting on behalf of ‘sophisticated owners’ with an exemption from the Act. The exemption provided by the clause is intended to reflect that individuals and corporations that own large parcels of non-residential property, or who are engaging in transactions involving the sale or management of large-scale, commercial land and buildings, are unlikely to need the consumer protection provisions provided in the Bill.

Rather, the application of consumer protection provisions to entities engaging in these types of activities and transactions is likely to add unnecessary and unwanted compliance costs for sophisticated property owners that engage a person to undertake work on their behalf in relation to property transactions.

Clause 8(1) provides that a person acting as a property agent for the sale or exchange of real property (other than residential property or rural land) is exempt from the Act if the transaction is in relation to real property that has:

- a total gross floor area of at least the area prescribed under a regulation; or
- a total estimated value of at least the amount prescribed under a regulation.

In addition, a person acting as a property agent for the sale or exchange of real property (other than residential property or rural land) is exempt from the Act for the transaction if each party to the transaction owns real property, other than the real property that is the subject to the transaction, that has:

- a total gross floor area of at least the area prescribed under a regulation; or
- a total estimated value of at least the amount prescribed under a regulation.

Clause 8(2) exempts from the Bill, a person acting as a property agent or resident letting agent for the letting of real property or the collecting of rents for real property (other than residential property or rural land), if the person is acting on behalf of an entity that owns real property that has:

- a total gross floor area of at least the area prescribed under a regulation; or
- a total estimated value of at least the amount prescribed under a regulation.

Clause 8(3) clarifies how the exemption under clause 8(2) applies where a person acts as a property agent for more than one entity engaged in a joint venture arrangement.

Clause 8(4) defines ‘estimated value’ for the purposes of clause 8.

Clause 9 provides that a regulation may exempt from this Act a class of person who acts as a property agent or resident letting agent for an entity if the class of person is acting as a property agent or resident letting agent for another entity related to the entity.

Clause 10 provides that particular provisions of the Bill do not apply to a financial institution or trustee company.

Clause 11 provides an exemption from particular parts of the Bill for non-profit corporations (as defined in clause 4), where the non-profit corporation provides or locates affordable rental housing under an affordable housing scheme, or approved supported accommodation, and the providing or locating of the housing or accommodation is funded or managed by the Commonwealth, a State or a local government.

Importantly, the exemption provided by this clause does not apply where the non-profit corporation is otherwise carrying on the business of a resident letting agent or property agent.

To avoid any doubt, clause 11(3) clarifies that a corporation does not stop being a non-profit corporation only because it receives a reward for providing its services to another non-profit corporation.

Clause 11(4) defines key terms for the provision.

Division 3 Objects of Act

Clause 12 states the objects of the Act and explains how the objects are to be achieved.

The objects include provision of an occupational licensing system for particular, property-related occupations which balances consumer protection with the promotion of freedom of enterprise in the marketplace. A further object is to protect consumers from particular, undesirable practices associated with the promotion of residential property (commonly known as ‘marketeeing’).

The objects are to be achieved by, among other things, imposing appropriate probity and training standards on people working in particular property-related occupations, providing effective consumer protection and enforcement measures (including in relation to the activities of marketeers), and regulating fees and commissions that may be charged for

particular transactions (for example, under clause 88, a property agent appointed to sell property for commission must not claim commission worked out on an amount more than the actual sale price of the property).

The objects are also achieved by providing a regulatory framework whereby responsibility for licensing rests with the chief executive and responsibility for disciplinary matters and for reviewing particular decisions of the chief executive rests with the QCAT.

Division 4 Interpretation

Clause 13 states that the dictionary in schedule 3 defines particular words used in the Bill.

Clause 14 provides a definition of ‘auctioneer’.

Clause 15 provides a definition of ‘property agent’. Under the Bill, a property agent is an auctioneer or a real estate agent (two of three categories of licence that the chief executive may issue under the Bill (refer to clause 24)).

Clause 16 provides a definition of ‘real estate agent’.

Clause 17 provides a definition of ‘resident letting agent’.

Clause 18 gives the meaning of ‘completes a residential property sale’.

Clause 19 gives the meaning of the phrase ‘in charge’. A person will be taken to be in charge of a licensee’s business at a place only if the person personally supervises, manages or controls the conduct of the licensee’s business at the place.

Clause 20 gives the meaning of an ‘open listing’. More specifically, clause 20 provides that an open listing is a written agreement entered into between a seller and a property agent for the sale of property. Under an open listing, a seller retains the right to sell the seller’s property during the term of the agreement or to appoint additional property agents as selling agents to sell the property. Under an open listing, an appointed selling agent is entitled to remuneration only if he or she is the effective cause of sale.

Clause 20 also provides that an open listing of an agent can be ended at any time by either party giving the other party written notice of the ending of the appointment.

Clause 21 gives the meaning of ‘residential property’.

Clause 22 gives the meaning of an ‘unsolicited invitation’.

Clause 23 provides for the difference between an exclusive agency and a sole agency. The only difference between an exclusive agency and a sole agency is the extent of the entitlement of a selling agent to receive an agreed commission or other reward on the sale of particular property (clause 23(1)).

Under an exclusive agency, a selling agent is entitled, on the sale of particular property and in accordance with the terms of an agreement with the seller of the property, to receive an

agreed commission or other reward, whether or not the selling agent is the effective cause of the sale (clause 23(2)).

If the sale was subject to a sole agency, the selling agent would not be entitled to the commission or other reward if the seller was the effective cause of the sale (clause 23(3)).

Clause 20(4) defines key terms for the provision.

Part 2 Licensing

Division 1 Categories of licence

Clause 24 provides that under the Bill, the chief executive may issue 3 different categories of licence. These categories are an auctioneer licence, a real estate agent licence and a resident letting agent licence.

Division 2 Auctioneer's authorisation

Clause 25 provides that an auctioneer licence authorises the holder of the licence to perform as an agent for others for reward, the activity of selling or attempting to sell, or offering for sale or resale, any real property, or an interest in real property, by way of auction. In addition, an auctioneer licence authorises the auctioneer to sell the property or interest by any means during the auction period, which is the period for which the auctioneer is appointed under clause 102, or otherwise authorised or permitted under this or another Act to sell the property (refer to clause 25(3)).

Under clause 25, an auctioneer licence also authorises the holder of the licence to perform the activity of selling or attempting to sell or offering for sale or resale goods by way of auction if the sale or resale is directly connected with a sale by auction of a place of residence or land performed by the property agent, whether or not the sale of goods is being conducted separately from the auction of the place of residence or land.

An auctioneer may perform these activities in the carrying on of a business, either alone or with others, or as an employee of a property agent (clause 25(3)).

Division 3 Real estate agent's authorisation and responsibility

Clause 26 provides that a real estate agent licence authorises the holder of the licence to perform the following activities as an agent for others for reward:

- to buy, sell (other than by auction), exchange or let real property or interests in real property;
- to buy, sell (other than by auction), exchange, or let businesses or interests in businesses;
- to negotiate for the buying, selling, exchanging, or letting of real property, interests in real property, businesses or interests in businesses; or
- to collect rents.

A real estate agent may perform these activities in the carrying on of a business, either alone or with others, or as an employee of someone else (clause 26(4)).

Division 4 Resident letting agent's authorisation

Clause 27 provides that a resident letting agent licence authorises the holder of the licence to let lots in a building complex and collect rents for lots in a building complex as an agent for others for reward (clause 27(1)).

A resident letting agent may perform the activities in the carrying on of a business, either alone or with others, or as an employee of someone else (clause 27(2)).

Division 5 Limited property agent licence

Clause 28 allows the chief executive to issue a property agent licence that limits, as prescribed under regulation, the activities that may otherwise be performed under the licence (clause 28(1)). For example, a limited licence could limit the holder to performing business letting functions. To be eligible for a limited licence, an applicant must have the educational qualifications approved by the chief executive for obtaining the licence (clause 28(2)).

Division 6 How to obtain a licence

Clause 29 outlines the steps a person must follow to obtain a licence. Clause 29 also provides that a person who wishes to obtain a licence must be suitable under division 8 (Suitability of applicants and licensees), and that in deciding an application for a licence, the chief executive must have regard to the person's suitability to hold a licence under the Act, and the persons eligibility to hold a licence under the Act. Eligibility criteria for a licence are dealt with in division 9, subdivision 1 (property agent licence), subdivision 2 (resident letting agent licence) and subdivision 3 (particular government entities).

Division 7 Applications for licence and particular request requirement

Clause 30 sets out the requirements for an application for a licence under the Bill.

Clause 31 requires applicants to state a business address in their application.

Clause 32 restricts the ability of particular persons to make an application for a licence. Specifically, an individual who is a disqualified person can not make an application for a licence during the period within which the licence is disqualified (clause 32(1)). A corporation that has had a licence cancelled may not make an application for a licence unless the corporation can satisfy the chief executive that there have been substantial changes (as described in clause 32(2)(a) and (b)) to the composition of shareholders and management of the corporation since the licence was cancelled. Also, clause 32(3) and (4) impose limitations on the ability of individual and corporations who have had a licence application refused by the chief executive from making further applications for a licence.

Clause 33 allows the chief executive to require a person applying for a licence (or for the renewal, restoration, or reactivation of a licence, or for the appointment or extension of appointment of a substitute licensee) to provide information or material the chief executive

considers is needed to consider the matter (clause 33(2)). If the person fails to provide the material or information, the person is taken to have withdrawn the application or request (clause 33(3)).

Division 8 Suitability of applicants and licensees – individuals

Clause 34 provides that an individual who is not a suitable person can not hold a licence (clause 34(2)). In accordance with clause 34(1), an individual is not a suitable person to hold a licence if the person is:

- an insolvent under administration;
- a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence (defined in schedule 3);
- currently disqualified from holding a licence or registration certificate; or
- a person the chief executive decides under clause 36 (Chief executive must consider suitability of applicants and licensees) is not a suitable person to hold a licence.

Clause 35 provides that a corporation that is not a suitable person can not hold a licence (clause 35(3)). In accordance with clause 35(1), a corporation is not a suitable person if the corporation:

- has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence (defined in schedule 3);
- is currently disqualified from holding a licence; and
- is a person the chief executive decides under clause 36 (Chief executive must consider suitability of applicants and licensees) is not a suitable person to hold a licence.

In addition, clause 35(2) provides that a corporation is also not a suitable person to hold a licence if an executive officer of the corporation:

- is an insolvent under administration;
- has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence (defined in schedule 3);
- is currently disqualified from holding a licence or registration certificate; or
- is a person the chief executive decides under clause 36 (Chief executive must consider suitability of applicants and licensees) is not a suitable person to hold a licence.

Clause 36 provides a range of criteria that the chief executive must consider in deciding whether a person is a suitable person to hold a licence under the Act (clause 36(1)). If the chief executive decides that a person is not a suitable person to hold a licence, the chief executive must give the person an information notice about the decision within 14 days after the decision is made (clause 36(2)). The term ‘information notice’ is defined in schedule 3 as

a notice complying with *section 157(2)* of the *Queensland Civil and Administrative Tribunal Act 2009*. In summary, an information notice advises the person of the chief executive's decision and the reason for it, and provides information about the person's right to have the decision reviewed by QCAT.

Clause 36(4) defines key terms for the provision.

Clause 37 provides that the corporation sole called The Public Trustee of Queensland is taken to be a suitable person for a licence.

Clause 38 provides that the chief executive of a department is taken to be a suitable person to hold a licence.

Clause 39 provides that Defence Housing Australia is taken to be a suitable person to hold a licence.

Clause 40 permits the chief executive to make investigations about specified persons (including the licence applicant (as defined in clause 40(6) or licensee, their business partners and associates and executive officers of a corporation that is an applicant or licensee) to help the chief executive decide whether a person is suitable to hold a licence (clause 40(1)). These investigations may include asking the commissioner of the police service for a report about the criminal history of any of the persons (clause 40(2)). If a report is requested, the commissioner must give the report to the chief executive (clause 40(3)). However, the report is only required to contain criminal history in the commissioner's possession, or to which the commission has access (clause 40(4)). If the person's criminal history includes a recorded conviction, the commissioner's report must be written (clause 40(5)).

Clause 41 allows the commissioner of the police service to advise the chief executive if the commissioner reasonably suspects that a person is a licensee, substitute licensee or substitute real estate salesperson, and the person's criminal history changes (clause 41(3)).

Clause 42 enables the chief executive to recover the costs of obtaining a criminal history report from licence applicants and licensees where applicable.

Clause 43 requires that information obtained under clauses 40 and 41 may only be used by the chief executive for making a decision about whether a person is, or continues to be, a suitable person to hold a licence. In accordance with clause 43(4), information about a charge against the person (provided to the chief executive under clause 41) may not be relied on as a basis for making a decision as to whether the person is, or continues to be, a suitable person to hold a licence.

Clause 44 provides for the confidentiality of information obtained under clauses 40 and 41 (clause 44(1) and (2)). The provision also requires the chief executive to destroy information obtained under clauses 40 and 41 as soon as practicable after considering the person's suitability to hold a licence (clause 44(3)).

Division 9 Eligibility for licence

Subdivision 1 Property agent licence

Clause 45 deals with eligibility criteria for individuals and corporations wishing to obtain a property agent licence. More specifically, clause 45(1) provides that an individual is eligible to obtain a property agent licence only if the individual:

- is at least 18 years old; and
- has the educational or other qualifications approved by the chief executive for a property agent licence.

An individual is taken to satisfy the second requirement relating to education or other qualifications if the individual has comparable qualifications, or has held a comparable licence, as described in clause 45(2). Clause 45(3) and (4) provide that a corporation is only eligible for an auctioneer licence or a real estate agent licence if the person in charge of the corporation's auctioneer business is an auctioneer and if the person in charge of the corporation's real estate business is a real estate agent.

Subdivision 2 Resident letting agent licence

Clause 46 sets out similar eligibility criteria for individuals and corporations wishing to obtain a resident letting agent licence as those provided in clause 45 for individuals and corporations seeking a property agent licence.

Subdivision 3 Particular government entities

Clause 47 provides that the corporation sole called The Public Trustee of Queensland is taken to be eligible for a licence.

Clause 48 provides that the chief executive of a department is taken to be eligible for a licence.

Clause 49 provides that Defence Housing Australia is taken to be eligible for a licence.

Division 10 Issue of licences

Clause 50 allows the chief executive to decide to issue or refuse to issue a licence (clause 50(1)). The chief executive may decide to issue a licence only if the criteria in clause 50(2) are satisfied. If the chief executive refuses to issue a licence, the chief executive must give the applicant an information notice (as defined in schedule 3) about the decision within 14 days after the decision is made.

Clause 51 allows the chief executive to issue a licence to the public trustee and provides for the ability of officers or employees of the public trustee to perform activities under the authority of the licence.

Clause 52 allows the chief executive to issue a licence to the chief executive of a department and provides for the authority of an officer or employee of the relevant department to carry

out activities under the authority of the licence. In accordance with clause 52(3), the chief executive of a department, as a licensee, is taken to represent the State.

Clause 53 allows the chief executive to issue a licence to Defence Housing Australia and provides for the ability of officers or employees of Defence Housing Australia to perform activities under the authority of the licence.

Clause 54 allows the chief executive to impose a licence on conditions the chief executive considers necessary or desirable for the proper performance of functions under the licence (clause 54(1)). If the chief executive decides to issue a licence on condition, the chief executive must give the applicant an information notice (as defined in schedule 3) about the decision within 14 days after the decision is made (clause 54(3)).

Division 11 Restriction on performing activities under licences

Clause 55 imposes particular restrictions on the activities a corporation may perform under its licence. In summary, a corporation can not perform an activity under its licence unless the activity may be performed by particular persons associated with the management of the corporation, as specified in clause 55(1) and (2). Clause 55(3) specifies the people that can carry out an activity for a corporation that is a former licensee (as defined in clause 55(5), under the former licence. If a corporation performs an activity it is not authorised to perform, it is taken to be a person who acts as a licensee without a licence for the performance of the activity (clause 55(4)).

Clause 56 limits the activities an employed licensee may perform to the activities the person's employer may perform under the employer's licence (clause 56(1)), with an exception for individuals who hold an auctioneer licence conducting an auction for their employer (clause 56(2)). If the employed licensee performs an activity which the individual is not authorised to perform, the individual is taken to be a person who acts without a licence for the performance of the activity (clause 56(3)).

Clause 57 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.

Division 12 Renewal and restoration of licences

Subdivision 1 Renewal

Clause 58 enables a licensee to apply to the chief executive for renewal of the licensee's licence, before the licence expires (clause 58(1)). The requirements for a renewal application are detailed in clause 58(2) and (3).

Clause 59 requires the chief executive to consider an application for the renewal of a licence and enables the chief executive to decide to renew or refuse to renew the licence (clause 59(1)). The chief executive may only renew a licence if the criteria in clause 59(2) are satisfied. If the chief executive refuses a licence renewal application, the chief executive must give the applicant an information notice (as defined in schedule 3) about the decision within 14 days after the decision is made (clause 59(3)).

Clause 60 provides that if a renewal application is made to the chief executive, the relevant licence is taken to continue in force from the day it would have expired, until the renewal application is decided, withdrawn or taken to be withdrawn.

Subdivision 2 Restoration

Clause 61 enables a person whose licence has expired to apply to the chief executive for restoration of the licence within 3 months after the expiry. The requirements for a restoration application are detailed in clause 61(2) and (3).

Clause 62 provides that if a restoration application is made under clause 61, the person's licence is taken to continue in force from the day that it would have expired, until the application is decided, withdrawn or taken to be withdrawn.

Clause 63 provides that the chief executive must consider a restoration application and may restore or refuse to restore a licence (clause 63(1)). A licence may be restored only if the criteria set out in clause 63(2) are satisfied. If the chief executive refuses to restore a licence the chief executive must give the licensee an information notice (as defined in schedule 3) about the decision.

In accordance with clause 63(4)(a), if the chief executive decides to restore a licence, the licence is taken to have been renewed on the day it would, apart from clause 62, have expired. Clause 63(4)(b) provides for the validity of actions taken between the initial expiry date and the day the decision is made about the restoration application.

Division 13 Dealing with licences

Subdivision 1 Licence not to be transferred, lent or borrowed

Clause 64 prohibits the transfer of licences.

Clause 65 prohibits a licensee from selling, lending or hiring out their licence; notifying or advertising that a licence is available for sale, loan or hire to another person; or permitting someone else to hold out that the person is the holder of the licence issued to the licensee (clause 65(1)). Contraventions of the provision may attract a maximum penalty of 200 penalty units or 2 years imprisonment.

Under clause 65, it is also an offence for a person to borrow, hire or buy a licensee's licence (clause 65(2)). Similar to clause 65(1), contraventions may attract a maximum penalty of 200 penalty units or 2 years imprisonment.

The clause also provides that a person who has the effective or apparent management or control of a licensee's business who is not the holder of a licence (or appointed as the licensee's substitute) is taken to have borrowed the agent's licence, and the agent is taken to have lent the licence to the person (clause 65(3)).

Subdivision 2 Substitute licences

Clause 66 provides for the appointment of a substitute licensee in place of an individual, principal licensee. A principal licensee who will be absent from the licensee's registered

office may appoint a consenting adult as substitute licensee for a period of not more than 30 days (clause 66(1)). Clause 66(2) imposes administrative and record keeping requirements on a principal licensee that appoints a substitute licensee under clause 66(1).

If the principal licensee will be absent from the licensee's registered office for more than 30 days, the principal licensee must apply to the chief executive in the approved form for the appointment (or extension of appointment) of a nominated person as the substitute licensee (clause 66(3)). If an administrator has been appointed for the principal licensee under the *Guardianship and Administration Act 2000*, the licensee's representative may make the application under clause 66(3).

The requirements for an application to the chief executive for the appointment of a substitute licensee for an individual principal licensee are contained in clause 66(5). Clause 66(6) defines key terms for the provision.

Clause 67 provides for the appointment of substitute licensees for employed licensees and real estate salespeople who are in charge of a principal licensee's business at a place. Similar to clause 66, clause 67 allows a principal licensee to appoint a substitute for an employed licensee or real estate salesperson who is in charge of the principal licensee's business at a place, where the employed licensee or real estate salesperson will be absent from the place for up to 30 days (clause 67(2)). If the employed licensee or registered salesperson will be absent for more than 30 days, the principal licensee must apply to the chief executive for the appointment, or extension of appointment, of a person as a substitute for the employed licensee or registered salesperson (clause 67(4)).

Clause 68 enables the chief executive to decide to appoint, or refuse to appoint, a substitute licensee or substitute real estate salesperson in relation to applications under clauses 66 and 67. The chief executive may only appoint a nominated person as a substitute if the chief executive is satisfied the person meets the criteria prescribed in clause 68(2). In addition, the chief executive may impose conditions on the appointment (clause 68(3)). If the chief executive refuses an application, or decides to impose conditions on the appointment, the chief executive must give the principal licensee an information notice about the decision (as defined in schedule 3)(clause 68(5)).

Clause 69 provides for the effect of the appointment of a substitute licensee or substitute real estate salesperson and makes provision for when the appointment of a substitute licensee or real estate salesperson ends (clause 69(3)).

Importantly, a licensee or registered salesperson may not perform activities under the authority of their licence while the appointment of a substitute licensee or registered salesperson is in effect (clause 69(2)). A contravention of this provision may attract a maximum penalty of 200 penalty units.

Clause 70 limits the frequency with which a principal licensee may appoint substitute licensees for himself or herself, as well as the frequency with which a principal licensee may appoint a substitute for an employed licensee or real estate salesperson (clauses 70(1) and (2)). In addition, clause 70(3) limits the frequency with which the chief executive may appoint a substitute for a licensee or registered salesperson.

Subdivision 3 General

Clause 71 provides the authority and process for the chief executive to make amendments to conditions on a licence on the application of the licensee, or on the order of QCAT after a disciplinary hearing, or on the chief executive's own initiative.

Clause 72 enables the chief executive to require the holder of a licence to produce the licence for amendment or replacement within a stated period of not less than 14 days, if the chief executive intends to amend the conditions of the licence under clause 71 (Amendment of licence conditions) or replace the licence under clause 81(5) (Replacement licences). The licence holder must comply with the requirement unless the person has a reasonable excuse. A maximum penalty of 100 penalty units may apply for contraventions of the provision.

Clause 73 imposes an obligation on a person whose licence has been suspended or cancelled to return the licence to the chief executive within 14 days after the suspension or cancellation, unless the person has a reasonable excuse (clause 73(1)). A maximum penalty of 100 penalty units applies for contraventions of the requirement. Clause 73(1) does not apply if the licensee is obliged to return the licence to the chief executive as a result of an immediate suspension of the licence under clause 76 or immediate cancellation of the licence under clause 77.

Clause 74 allows a licensee to surrender their licence by giving written notice to the chief executive and returning the licence (clause 74(1)). A surrendered licence stops having effect on the day it is surrendered (clause 74(2)).

Clause 75 provides for the deactivation of licences. A licensee may ask the chief executive to deactivate the licensee's licence by submitting a request in the approved form, accompanied by the prescribed fee (clause 75(1) and (2)). Clause 75 also provides for the timing and effect of deactivation (clause 75(3), (4) and (5)) and the process and limitations for reactivating a licence (clause 75(7), (8) and (9)). In accordance with clause 75(6), the holder of a deactivated licence may apply to the chief executive to have the deactivated licence renewed or restored at a reduced fee.

Division 14 Immediate suspension and cancellation of licences

Clause 76 enables the chief executive to suspend a licensee's licence in certain circumstances (as set out in clause 76(1)). The chief executive may suspend a licence under clause 76 whether or not disciplinary proceedings have commenced against the licensee (clause 76(2)). Clause 76(3) and (4) provide for the period of suspension, which varies depending on the reasons for the chief executive's decision to suspend the licence. If the chief executive decides to suspend a licence, the chief executive must give the licensee an information notice about the suspension within 14 days after suspending the licence (clause 76(5)). If a licence is suspended, clause 76(6) imposes an obligation on the licensee to return the licence to the chief executive within 14 days, unless the person has a reasonable excuse. A maximum penalty of 100 penalty units may apply for a contravention of the provision.

Clause 77 provides for the immediate cancellation of a licence on the happening of the following events:

- the licensee is convicted of a serious offence;

- if the licensee is an individual – the licensee is an insolvent under administration; or
- if the licensee is a corporation, the licensee has been wound up or deregistered under the Corporations Act.

In accordance with clause 77(2), a licensee must return the licence to the chief executive within 14 days after the happening of an event mentioned above unless the licensee has a reasonable excuse. A maximum penalty of 100 penalty units may apply for a contravention of the provision.

Division 15 General provisions about licences

Clause 78 provides that a licence must be in the approved form (clause 78(1)). The clause also provides particulars that must be contained on a licence issued by the chief executive (clause 78(4)). Under clause 78, the chief executive may approve a form of licence for office display or personal identification purposes (clause 78(2)) and may also issue a form of licence for a corporation endorsed with the categories of licence issued in the corporation's name (clause 78(3)).

Clause 79 imposes obligations on corporate licensees, principal licensees and licensees employed by a principal licensee to keep a copy of their respective licences available for inspection at specified places of business. Maximum penalties of 100 penalty units may apply for a contravention of the provisions.

Clause 80 provides that a licence may be issued for a 1 year or 3 year term.

Clause 81 enables a licensee to apply to the chief executive for the replacement of a licence that has been lost, stolen, destroyed or damaged (clause 81(1)). Clause 81 also enables the chief executive to replace a licence if necessary as a result of changes to the licensee's circumstances (clause 81(5)).

Clause 82 requires the chief executive to keep a register of licences and applications for licences (clause 82(1)). The provision also outlines the required content for the register (clause 82(2)) and provides that persons may, on payment of the fee prescribed under a regulation, inspect or get a copy of the details in the register (clause 82(3)).

Clause 83 requires licensees to notify the chief executive of prescribed changes in the licensee's circumstances within 14 days after the change. The prescribed changes are those prescribed in a regulation made under the Act. Failure to comply with the requirement may attract a maximum penalty of 100 penalty units.

Part 3 Property agents and resident letting agents generally

Division 1 Conduct provisions

Subdivision 1 Carrying on business

Clause 84 states who must be ‘in charge’ (defined in clause 19) of a property agent’s business at a place. Clause 84(1)(a) provides that a property agent who is an individual and a principal licensee must be in charge of the agent’s business at the agent’s registered office. Clause 84(1)(b) provides for the requirements for principal licensee’s to follow regarding who must be in charge of the principal licensee’s business at a place other than the registered office. A maximum penalty of 200 penalty units may apply for a contravention of the provision.

Clause 84(2) provides for who must be in charge of places of business of a property agent that is a corporation and a principal licensee and prescribes penalties for failure to comply with the provision.

In accordance with clause 84(3), an individual must not be in charge of a property agent’s business at more than one place; however, this does not apply where places of business are on contiguous land (clause 84(4)).

Clause 85 states who must be in charge of a resident letting agent’s business at a place. Clause 85(1) provides that a resident letting agent who is an individual and a principal licensee must be in charge of the agent’s business at the agent’s registered office. Clause 85(2) provides for who must be in charge of a registered office of a resident letting agent that is a corporation and includes penalties for breaches of the requirement.

A resident letting agent who is an individual and a principal licensee must also ensure, if the principal licensee has more than 1 place of business and the other place of business is a resident letting agency (as in a place of business at which the only business carried on is the business of a resident letting agent), that a real estate agent, or resident letting agent, who is an individual is in charge of the agent’s business at the place of business. A maximum of 200 penalty units may apply if the resident letting agent does not ensure the above requirements are met (clause 85(3)).

Under clause 85(4), if a resident letting agent that is a corporation carries on a business of letting lots in more than 1 building complex; and the resident letting agent has more than 1 place of business, the resident letting agent must ensure an individual who is a resident letting agent or real estate agent is in charge of the agent’s business at the place. The provision includes penalties for contraventions.

Subclause (5) of clause 85 provides that an individual must not be in charge of a resident letting agent’s business at more than 1 place, otherwise the individual may be subject to a maximum of 200 penalty units. However, subclause (6) of clause 85 provides that a property agent who is an individual may be in charge of more than 1 place of business and not be subject to the offence noted if each place of business is on land contiguous to land on which the other place of business is located.

Clause 86 provides that if a resident letting agent has body corporate approval to manage one building complex, the agent must ensure that the agent’s registered office is in the building

complex (clause 86(1)). If the resident letting agent has body corporate approval to manage more than one building complex, the agent must ensure that the agent's registered office is on one of the building complexes. A maximum penalty of 200 penalty units may apply to contraventions of clause 86.

Clause 87 provides that principal real estate agents are responsible for the acts and omissions of real estate salespersons. A real estate agent who is a principal licensee must take reasonable steps to ensure each real estate salesperson employed by the agent is properly supervised and complies with this Act. In addition, a real estate agent who is an employed licensee in charge of a licensee's business at a place of business must take reasonable steps to ensure each real estate salesperson employed at the place is properly supervised and complies with this Act.

If the principal licensee or employed licensee responsible for the acts and omissions of a real estate sales person does not take reasonable steps to ensure each real estate salesperson is properly supervised and complies with this Act, the licensee responsible may be liable to disciplinary action under Part 9.

Subdivision 2 Recovery of reward or expense by property agent or resident letting agent

Clause 88 applies to a property agent who performs, for the payment of a commission, a service of selling or letting property or collecting rents, or a resident letting agent who performs, for the payment of a commission, a service of letting lots or collecting rents and provides that the property agent or resident letting agent must not claim commission worked out on an amount more than the actual sale price of the property, the actual rental for the property being let or the actual amount of rent collected. Otherwise, the property agent or resident letting agent may be subject to a maximum of 200 penalty units.

Clause 89 states that a person is not entitled to sue for, recover or keep a reward or expense for the performance of an activity as a property agent or resident letting agent unless, at the time the activity was performed the person held the appropriate licence and was authorised under the person's licence to perform the activity and as properly appointed under part 4 by the person to be charged with the reward or expense. If a person that does not satisfy these three requirements sues for, recovers or keeps a reward or expense for the performance of an activity as a property agent or resident letting agent the person commits an offence and may be subject to a maximum of 200 penalty units.

Clause 90 states that a person is not entitled to sue for, recover or keep, a reward for the performance of an activity as a property agent or resident letting agent that is more than the amount of the reward stated in the appointment given to the person under clause 102.

In addition, a person is not entitled to sue for, recover or keep, expenses for the performance of an activity as a property agent or resident letting agent that are more than the amount of the expenses stated in the appointment given to the person under clause 102 and actually expended.

A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a property agent or resident letting agent, other than as provided in this clause, commits an offence and may be subject to a maximum of 200 penalty units.

Clause 91 applies if a person is convicted of an offence against clause 88(2), 89(2) or 90(3); and the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from a client for whom the person performed an activity, 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 is imposed on the conviction. The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of the court.

Subdivision 3 Auction of goods

Clause 92 provides that where an auction of goods is conducted by an auctioneer, it is an offence for the property agent to charge the buyer of the goods a buyer's premium unless the auctioneer before the auction:

- obtains the written consent of the owner of the goods; and
- discloses, in the way prescribed under a regulation, that a buyer's premium is payable on the purchase of the goods; and
- the premium is not more than the amount prescribed or worked out under a regulation.

A maximum penalty of 200 penalty units may apply for contraventions.

The property agent does not act for the buyer of the goods only because the agent accepts a buyer's premium from the buyer.

Division 2 General

Clause 93 states what a property agent's or resident letting agent's registered office is. For a property agent or resident letting agent who is a principal licensee, their registered office is the place the agent states in the agent's application for a property agent licence or resident letting agent licence as the agent's principal place of business. Otherwise, their registered office is another place notified to the chief executive by the agent in the approved form as the agent's principal place of business.

For a property agent or resident letting agent who is an employed licensee, their registered office is the place the agent states in the licensee's application for a property agent licence or resident letting agent licence as the agent's business address. Otherwise, their registered office is another place notified to the chief executive by the agent in the approved form as the agent's business address.

Clause 94 provides that a property agent, or resident letting agent, who is a principal licensee must notify the chief executive in the approved form of any change in the agent's principal place of business within 14 days after the change. A principal licensee must also notify the chief executive in the approved form of the closure or opening of any place where the agent carries on business within 14 days after the closure or opening. If a property agent or resident

letting agent who is a principal licensee does not comply with these requirements, the principal licensee may be subject to a maximum of 200 penalty units.

A property agent, or resident letting agent, who is an employed licensee, must also notify the chief executive in the approved form of any change in the agent's business address within 14 days after the change; otherwise, the employed licensee may be subject to a maximum of 200 penalty units.

Clause 95 provides that a property agent, or resident letting agent, who is a principal licensee, must not publish, or permit to be published, in a newspaper or elsewhere, an advertisement for the agent's business without stating in the advertisement the particulars prescribed under a regulation. The maximum penalty that may apply to a property agent or resident letting agent that does not comply with this requirement is 100 penalty units.

Clause 95 also provides that a property agent who conducts an auction must display at the auction, in the way and for the period prescribed under a regulation (or they may be subject to a maximum of 100 penalty units):

- the property agent's name; and
- any other particulars prescribed under a regulation.

Clause 96 applies if a resident letting agent is a letting agent for a community titles scheme and the resident letting agent enters into a contract to sell management rights for the community titles scheme. This clause provides that at least 14 days before the day management rights are to pass to the buyer under the contract, the existing letting agent must make available to the buyer the existing letting agent's trust account records for the community titles scheme to which the management rights relate for the prescribed period (5 years, or if the existing resident letting agent has been the letting agent for the community titles scheme for a shorter period, the shorter period) before the intended date of the sale of the management rights.

Subclause (3) of clause 96 further provides that if the existing letting agent fails to comply with the requirement to make available to the buyer the existing letting agent's trust account records, the new letting agent may avoid the contract.

Division 3 Offences

Clause 97 provides that a person must not, as an agent for someone else for reward, perform an activity that may be done under the authority of a property agent licence or act as a property agent unless the person holds a property agent licence and the performance of the activity is authorised under the person's licence, or the person is otherwise permitted under this or another Act to perform the activity. The maximum penalty that may apply to a person that performs an activity as an agent for someone else for reward without the proper authority is 200 penalty units or 2 years imprisonment.

Without limiting the ways a person may act as a property agent, clause 97 provides that a person acts as a property agent if the person performs an activity mentioned in clause 25(1) or (2) or 26(1), or advertises, notifies, states or in any way holds out that the person performs or is willing to perform an activity mentioned in clause 25(1) or 26(1).

However, clause 97(4) further provides that a person does not act as a property agent only because the person, while performing duties as an employee of a property agent at the property agent's registered office or other place of business:

- collects, and issues receipts for, rents; or
- gives a person a list, prepared by or for the property agent, of premises available for rent; or
- does something of an administrative nature relating to a thing the property agent does as a property agent.

A person also does not act as a real estate agent only because the person collects rents for the provider of rooming accommodation, as an employee of the provider, if the rents are collected in the course of providing rooming accommodation.

A lawyer does not act as a real estate agent only because the lawyer collects rents in the lawyer's practice if the lawyer complies with the requirements of the *Legal Profession Act 2007* for the rents.

A person does not act as a real estate agent only because the person sells, or negotiates the sale of, a manufactured home under an authority given to the person under the *Manufactured Homes (Residential Parks) Act 2003, section 60*.

Clause 98 provides that a real estate agent must not employ, as a real estate salesperson, a person the agent knows, or ought to know, does not hold a registration certificate; otherwise the real estate agent may be subject to a maximum of 200 penalty units (clause 98(1)).

Also, a real estate agent must not directly engage an independent contractor as a real estate salesperson unless the independent contractor holds a property agent licence; otherwise the real estate agent may be subject to a maximum of 200 penalty units (clause 98(2)).

A principal licensee who is an individual and carries on the business of a real estate agent must not employ, as a real estate salesperson for the business, another individual with whom the principal licensee carries on business as a real estate agent; otherwise the principal licensee may be subject to a maximum of 200 penalty units (clause 98(3)).

Also, under clause 98(4) a principal licensee that is a corporation and carries on business as a real estate agent must not employ an executive officer of the corporation as a real estate salesperson for the business; otherwise, the principal licensee may be subject to the following penalties:

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

Clause 99 provides that a property agent or resident letting agent must not act for more than 1 party to a transaction; otherwise the property agent or resident letting agent may be subject to

a maximum of 200 penalty units. In effect, for example, this means that the property agent or resident letting agent can not act for both the buyer and the seller to a transaction (or both the property owner and tenant).

If a property agent or resident letting agent acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made (clause 99(2)).

If the transaction is an exchange of property, a property agent does not contravene the subclause that provides that a property agent or resident letting agent must not act for more than 1 party to a transaction to the extent that the agent acts for each of the parties to the transaction (clause 99(3)).

Clause 100 provides that a person must not, as an agent for someone else for reward, perform an activity that may be done under the authority of a resident letting agent licence unless the person holds a resident letting agent licence and the performance of the activity is authorised under the person's licence, or the person is otherwise permitted under this or another Act to perform the activity. If the person does not hold the proper authorisation as provided in this clause, the person may be subject to a maximum of 200 penalty units or 2 years imprisonment.

Clause 100 also provides that a lawyer does not act as a resident letting agent only because the lawyer collects rents in the lawyer's practice for lots in a building complex if the lawyer complies with the requirements of the *Legal Profession Act 2007* for the rents (clause 100(2)).

In addition, clause 100 provides that a person does not act as a resident letting agent only because the person collects rents for the provider of rooming accommodation, as an employee of the provider, if the rents are collected in the course of providing rooming accommodation (clause 100(3)).

Clause 101 provides that an auctioneer, real estate agent or resident letting agent must, if asked by a person with whom the auctioneer, real estate agent or resident letting agent is dealing, produce the auctioneer's auctioneer licence for inspection by the person. If the auctioneer, real estate agent or resident letting agent does not comply with this requirement, they may be subject to a maximum of 100 penalty units.

Part 4 Appointment of property agent or resident letting agent

Division 1 Requirement to appoint property agent or resident letting agent

Clause 102 states that a property agent must not act as a property agent for a person (a client) to perform an activity (a service) for the client unless the client first appoints the property agent and the appointment complies with subclause (2), or an appointment that is in force is assigned to the property agent under the terms of that appointment or under clause 113 (clause 102(1)). A maximum of 200 penalty units applies.

Subclause (2) of clause 102 provides that the appointment of a property agent must comply with division 2 (which provides for the specific content requirements for appointments and

includes a clause that requires particular information to be provided in the approved form) and clause 109(1) (which requires the appointment form to be signed and dated) and must also include any other information prescribed under a regulation, in the form (if any) prescribed under a regulation.

Clause 102 also states that a resident letting agent must not act as a resident letting agent for a person (also a client) to perform an activity (also a service) for the client unless the client first appoints the resident letting agent and the appointment complies with subclause (4); or an appointment that is in force is assigned to the resident letting agent under the terms of that appointment or under clause 113. If the resident letting agent is not properly appointed in accordance with this clause, they may be subject to a maximum of 200 penalty units.

Subclause (4) of clause 102 provides that the appointment of a resident letting agent must comply with division 2, subdivision 1 (which provides for the specific content requirements for appointments and includes a clause that requires particular information to be provided in the approved form) and clause 109(1) (which requires the appointment form to be signed and dated) and must also include any other information prescribed under a regulation, in the form (if any) prescribed under a regulation.

Clause 102 further provides that an appointment of a property agent or resident letting agent may be for the performance of a particular service or services, or a particular service or services over a period.

Clause 102 also clarifies that agents acting in conjunction with an agent that has been properly appointed in accordance with this clause are not required to also enter into a separate appointment with a client.

Clause 103 applies to an appointment of a property agent for a sole or exclusive agency. Before an appointment of a property agent for a sole or exclusive agency is signed, the property agent must give the client a notice, in the approved form that provides information about sole and exclusive agency appointments.

The property agent must also discuss with the client whether the appointment is to be for a sole agency or an exclusive agency and the proposed term of the appointment and the consequences for the client if the property is sold by someone other than the agent during the term of the appointment. In addition, if the sole or exclusive agency appointment is in relation to the sale of residential property (other than the sale of residential property that is of a commercial scale), the property agent must also discuss with the client the client's entitlement to negotiate the term of the appointment up to a maximum term of 90 days.

If a property agent fails to comply with this clause, the property agent may be subject to an offence and a maximum of 200 penalty units. In addition, the commission of an offence against this clause also renders an appointment for the sale of a place of residence or land or an interest in a place of residence or land ineffective under clause 112(3).

Division 2 Content of appointment

Subdivision 1 Property agents and resident letting agents

Clause 104 sets out what information the appointment of a property agent or resident letting agent must include in the approved form, including a prominent statement that the client should seek independent legal advice before signing the appointment, whether the appointment is a single appointment or a continuing appointment, and other prescribed information about each service to be performed by the property agent or resident letting agent.

Clause 105 sets out other requirements for an appointment in relation to commission where the appointment is an appointment of a property agent or resident letting agent for a service that is the sale or letting of property or the collecting of rents if commission is payable for the service and is expressed as a percentage of an estimated sale price or amount of rent to be paid or collected. The other requirements for such an appointment are for the appointment to state in writing that the commission for the service is worked out only on:

- for the sale of property, the actual sale price; or
- for the letting of property, the actual rental for the property; or
- for the collecting of rents, the actual amount of the rent collected.

Clause 106 requires that an appointment of a property agent (other than an appointment of a property agent for a sole or exclusive agency) or a resident letting agent must state in writing that the appointment may be revoked by either party to the appointment giving the other party at least 30 days written notice of the revocation, unless the parties agree in writing to an earlier day for the appointment to end.

Subdivision 2 Property agents

Clause 107 sets out another requirement for an appointment that is in relation to an auction. The appointment must state in writing the day set for the auction.

Clause 108 requires that an appointment of a real estate agent for a sole or exclusive agency must also state in writing whether the appointment is for a sole or exclusive agency and the day the appointment ends. The clause also enables the appointment to provide that at the end of the term of the sole or exclusive agency, the appointment continues under the terms of an open listing that may be ended at any time by the client or agent.

Division 3 Other provisions

Clause 109 requires that an appointment of a property agent or resident letting agent under clause 102(1) or 102(3) to be signed and dated by the client and the property agent or resident letting agent, or someone authorised or apparently authorised to sign for the property agent or resident letting agent. The clause also requires that the property agent or resident letting agent must give a copy of the signed appointment to the client.

Clause 110 allows for a property agent to be reappointed for a sole or exclusive agency for the sale of residential property for 1 or more terms of not more than 90 days. However, the limitation on the term of reappointment does not apply if the reappointment is a commercial scale appointment.

The clause also provides that a property agent appointed for the sale of residential property under a sole or exclusive agency commits an offence if the agent is reappointed for the sale earlier than 14 days before the term of the sole or exclusive agency ends.

Clause 111 provides for the form of the reappointment of a property agent under clause 110. The reappointment must be in the approved form and include any other information required under a regulation, otherwise the reappointment is ineffective from the time it is made.

Clause 112 provides for when other appointments and reappointments are ineffective.

The appointment of a property agent for the sale of residential property under a sole or exclusive agency is ineffective from the time it is made if the term of the appointment is more than 90 days, except if it is a commercial scale appointment.

The appointment of a property agent for a sole or exclusive agency for the sale of a place of residence or land or an interest in a place of residence or land is ineffective from the time it is made if the property agent commits an offence against section 103.

The appointment of a property agent or resident letting agent is ineffective from the time it is made if the appointment does not comply with clause 104.

The reappointment of a property agent for a further term of sole or exclusive agency for the sale of residential property is ineffective from the time it is made if the property agent commits an offence against clause 110(3) relating to the reappointment.

Clause 113 provides for the assignment of appointments held, under clause 102, by property agents and resident letting agents to another property agent or resident letting agent.

Clause 114 provides for the revocation of an appointment. An appointment of a property agent (other than an appointment for a sole or exclusive agency) or resident letting agent may be revoked by either party giving the other party at least 30 days written notice of the revocation. However, the requirement for a minimum of 30 days notice of the revocation does not apply if both parties agree to an earlier termination date.

The appointment of a property agent for a sole or exclusive agency for a term of 60 days or more (the maximum term possible is 90 days in accordance with clause 112(1)), may be revoked by either party giving a minimum of 30 days written notice. However, an appointment that is for a term that is between 60 days and 90 days, must be for a minimum of 60 days, unless both parties agree in writing to an earlier day for the appointment to end.

The clause also provides that the revocation of an appointment of a property agent or resident letting agent does not affect existing contracts entered into by the property agent or resident letting agent on behalf of the client.

Also note, any appointment that has been assigned under clause 113 can be revoked by either party giving at least 30 days written notice of the revocation to the assignee.

Part 5 Registration of real estate salespersons

Division 1 Real estate salesperson's authorisation

Clause 115 provides that a registration certificate authorises the holder of the certificate to perform any activity that may be performed by the real estate agent who employs the holder, subject to any conditions on the certificate. A person who is the holder of a registration certificate is referred to as a *real estate salesperson* (schedule 3).

Division 2 How to obtain registration

Clause 116 sets out the steps involved for an applicant in obtaining registration as a real estate salesperson, which include providing an application detailing the applicant's eligibility for the registration and paying the prescribed fees (clause 116(2)). It also provides that in determining an application, the chief executive must have regard, among other things, to the person's suitability and eligibility to hold a registration certificate.

Division 3 Applications for registration

Clause 117 sets out the requirements for an application for registration.

Clause 118 prohibits an individual from making an application for a registration certificate if the individual is disqualified (under section 186, 188, 227 or 228) from holding a registration certificate. The individual is not permitted to make an application for a registration certificate during the period for which they are disqualified (clause 118(1)).

Clause 118 also prohibits an individual who has been refused a registration certificate from making another application for a registration certificate for 3 months after the date the chief executive gives the information notice about the chief executive's decision to refuse the registration certificate application. If a person who has been refused a registration certificate by a decision of the chief executive applies to QCAT for a review of the chief executive's decision and QCAT confirms the chief executive's decision, the person may not make another application until 3 months after the date of QCAT's decision.

Clause 119 provides that the chief executive may, by written notice, require an applicant for a registration certificate (or for renewal or restoration of a registration certificate), to give the chief executive information or material the chief executive reasonably considers is needed to consider the application. The applicant is taken to have withdrawn their application if the applicant fails to comply with the chief executive's request for information or material necessary for the consideration of the application (clause 119(3)).

Division 4 Suitability of applicants

Clause 120 provides a list of factors that will exclude an individual from being a suitable person to obtain registration as a real estate salesperson, and therefore from holding a registration certificate. Specifically, a person is not suitable for registration as a real estate salesperson if the person has been convicted within the preceding five years of a serious offence, is currently disqualified from holding a licence or registration certificate, or is a person the chief executive decides under clause 121 is not a suitable person to hold a registration certificate as a real estate salesperson (clause 120(1)).

Clause 121 sets out the matters that the chief executive must consider when deciding a person's suitability to obtain registration as a real estate salesperson. The person's character and previous licence or registration record are to be considered, including whether the person has had a licence or registration certificate suspended or cancelled or been disqualified from holding a licence or registration certificate under a relevant Act.

The chief executive must consider whether the person has been disqualified under a relevant Act from being an executive officer of a licensed corporation and whether a claim has been paid out of the claim fund because of something the person did or omitted to do. The chief executive must also consider the person's criminal history, whether the person is an insolvent under administration (and the circumstances giving rise to the insolvency), convictions (if any) for an offence under a relevant Act or the Administration Act, the person's capability of satisfactorily performing a regulated activity, and whether the person's name is entered in the register of disqualified company directors and other officers under the Corporations Act.

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 (defined in schedule 3) about the decision within 14 days after the decision is made.

Clause 122 enables the chief executive to make investigations about an applicant for a registration certificate or a real estate salesperson to help the chief executive decide whether the application is a suitable person to hold registration as a real estate salesperson (clause 122(1)). The chief executive's investigations may include asking the commissioner of the police service for a report about the person's criminal history (clause 122(2)). If requested by the chief executive, the police commissioner must provide the report, however, the report is only required to contain criminal history in the commissioner's possession or to which the commissioner has access (clauses 122(3) and (4)). If the criminal history of the person includes a conviction recorded against the person, the report must be in writing (clause 122(5)).

Clause 123 enables the commissioner of the police service to notify the chief executive that the criminal history of a person has changed, if the commissioner reasonably believes that the person is the holder of a registration certificate.

Clause 124 enables the chief executive to recover the costs of obtaining a criminal history report from applicants for a registration certificate and real estate salespeople where applicable.

Clause 125 provides that information obtained under clause 122 or 123 that is in relation to a conviction of a person can only be used for making a decision as to whether the person is or continues to be a suitable person (under clause 120) to hold a registration certificate. In accordance with clause 125(4), information about a charge against the person (provided to the chief executive under clause 123) may not be relied on as a basis for making a decision as to whether the person is, or continues to be, a suitable person to hold a registration certificate.

Clause 126 provides for the confidentiality of information obtained under clauses 122 and 123. The provision also requires the chief executive to destroy information obtained under clauses 122 and 123 as soon as practicable after considering the person's suitability to hold a licence (clause 126(3)).

Division 5 Eligibility for registration

Clause 127 states that an individual is eligible to obtain registration as a real estate salesperson only if the individual is at least 18 years of age and has the educational or other qualifications for registration generally approved by the chief executive (clause 127(1)).

An individual is taken to have the educational or other qualifications for registration generally approved by the chief executive if the chief executive is satisfied the individual has a comparable qualification to the qualification that has been approved by the chief executive for registration certificate eligibility or within the previous 2 years, the individual held a registration certificate or licence under the Act or under the PAMD Act (clause 127(2)).

Division 6 Issue of registration certificate

Clause 128 provides that the chief executive may issue or refuse to issue a registration certificate to an applicant (clause 128(1)). A registration certificate may be issued to an applicant only if the chief executive is satisfied of the applicant's suitability and eligibility to obtain registration. The chief executive must also be satisfied that the application was properly made under clause 117. If the chief executive refuses to issue a registration certificate to an applicant the chief executive must give the applicant an information notice about the decision (clause 128(3)). Clause 128(4) deals with when a person may make a further application for a registration certificate, if an earlier application was refused by the chief executive.

Clause 129 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 or another purpose consistent with the achievement of the Bill or the Administration Act (clause 129(1)). A condition may limit or prohibit the performance of an activity authorised by the Bill or the Administration Act (clause 129(2)). If the chief executive decides to issue a registration certificate subject to a condition, the chief executive must give the applicant an information notice (clause 129(3)).

Division 7 Renewal and restoration of registration certificates

Subdivision 1 Renewal

Clause 130 enables a real estate salesperson to apply for the renewal of their registration certificate before the certificate expires (clause 130(1)). The requirements for the application are provided in clause 130(2).

Clause 131 requires the chief executive to consider an application for renewal of a registration certificate and may decide to renew or refuse to renew the certificate. The chief executive may renew a registration certificate only if the chief executive is satisfied that the real estate salesperson is a suitable person to obtain registration as a real estate salesperson, the application was properly made under clause 130 and the real estate salesperson meets the eligibility requirement for the certificate. If the chief executive refuses to renew a registration certificate the chief executive must give the applicant an information notice about the decision (clause 131(3)).

Clause 132 provides that if a real estate salesperson makes a renewal application under clause 130, the real estate salesperson's certificate is taken to continue in force from the day that it would have expired, until the real estate salesperson's application is decided, withdrawn or taken to have been withdrawn.

Subdivision 2 Restoration

Clause 133 allows the holder of a real estate salespersons registration certificate that has expired to apply to the chief executive for restoration of the certificate within 3 months after the expiry. The requirements for the restoration application are contained in clause 133(2).

Clause 134 provides that if a real estate salesperson makes a restoration application under clause 133, the person's certificate is taken to continue in force from the day that it would have expired, until the restoration application is decided or taken to be withdrawn.

Clause 135 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 real estate salesperson is a suitable person to obtain registration as a real estate salesperson, the application was properly made under clause 133, and the real estate salesperson meets the eligibility requirement for the certificate (clause 135(2)). If the chief executive refuses to restore a registration certificate the chief executive must give the applicant an information notice (defined in schedule 3) about the decision (clause 135(3)). Clause 135(4) deals with the validity of actions taken under a registration certificate in the period between the day it would have expired and the day the restoration application is decided.

Division 8 Dealings with registration certificates

Subdivision 1 Transfer of registration certificate

Clause 136 prohibits the transfer of a registration certificate.

Subdivision 2 General

Clause 137 prohibits a real estate salesperson from selling, lending or hiring out the real estate salesperson's registration certificate; notifying or advertising that a registration certificate is available for sale, loan or hire to another person; or permitting someone else to hold out that the person is the holder of the registration certificate issued to the real estate salesperson (clause 137(1)). A contravention of the provision may attract a penalty of 200 penalty units or 2 years imprisonment.

It is also an offence for a person to borrow, hire or buy a real estate salesperson's registration certificate (clause 137(2)). A contravention of the provision may attract a penalty of 200 penalty units or 2 years imprisonment.

Clause 138 provides the authority and process for the chief executive to make amendments to conditions on a registration certificate on the application of the certificate holder, or on the order of QCAT after a disciplinary hearing, or own the chief executive's own initiative.

Clause 139 allows the chief executive to require the holder of a registration certificate to produce the certificate for amendment or replacement within a stated period, if the chief executive intends to amend the conditions of the certificate under clause 138, or replace the certificate under clause 147(5). The holder of the registration certificate must comply with the requirement, unless the person has a reasonable excuse (clause 139(2)). A maximum penalty of 100 penalty units may apply for a contravention of the provision.

Clause 140 imposes an obligation on a person whose registration certificate has been suspended or cancelled to return the certificate to the chief executive within 14 days after the suspension or cancellation, unless the person has a reasonable excuse. A maximum penalty of 100 penalty units may apply for a contravention of the provision. However, the provision does not apply if the holder of the certificate is obliged to return the certificate to the chief executive as a result of an immediate suspension under clause 142(2) or immediate cancellation under clause 143(2).

Clause 141 allows a real estate salesperson to surrender the real estate salesperson's registration certificate by giving written notice to the chief executive and returning the certificate (clause 141(1)). The certificate stops having effect on the day it is surrendered (clause 141(2)).

Division 9 Immediate suspension and cancellation of registration certificates

Clause 142 permits the chief executive to immediately suspend a registration certificate for particular reasons, whether or not disciplinary proceedings have been started under the Bill.

The certificate may be suspended on the conditions and for the period the chief executive decides. However, the suspension period must not be more than 28 days (clause 142(3)). The chief executive must give the real estate salesperson an information notice (defined in schedule 3) within 14 days of the suspension (clause 142(4)).

When a registration certificate has been suspended by the chief executive, the chief executive must give written notice of the suspension to the real estate salesperson, and the real estate salesperson must return the certificate to the chief executive within the prescribed timeframe, unless the person has a reasonable excuse (clause 142(5)). Contraventions of the provision may attract a maximum penalty of 100 penalty units.

Clause 143 provides that a registration certificate is immediately cancelled when a real estate salesperson is convicted of a serious offence (clause 143(1)). Upon conviction, the real estate salesperson is no longer registered and must return the registration certificate to the chief executive within 14 days of the conviction unless the real estate salesperson has a reasonable excuse (clause 143(2)). Contraventions of the provision may attract a maximum penalty of 100 penalty units.

Division 10 General provisions about employee registration

Clause 144 provides for a registration certificate to be issued in an approved form. An approved form of certificate may be of a type suitable for office display or for personal identification. The registration certificate must contain the name of the real estate salesperson, the date the certificate is issued, the expiry date of the certificate and any other prescribed particulars.

Clause 145 requires a real estate salesperson to keep a copy of the salesperson's registration certificate available for inspection at each place of business where the salesperson is employed as a real estate salesperson. A maximum penalty of 100 penalty units may apply for contraventions of the provision.

Clause 146 provides that a registration certificate may be issued for a term of 1 year or 3 years.

Clause 147 provides that a real estate salesperson may apply (in the approved form) to the chief executive for a replacement registration certificate if their certificate is lost, stolen, destroyed or damaged. If the chief executive is satisfied that the registration certificate needs to be replaced, the chief executive must issue a replacement certificate.

Clause 147 also allows the chief executive to issue a replacement registration certificate to a real estate salesperson if the chief executive is satisfied that a prescribed change required to be notified under clause 149 (for example, a change of the real estate salesperson's name) has happened and the prescribed change requires a replacement of the registration certificate, whether or not the real estate salesperson has notified the chief executive of the prescribed change in the way and as required under clause 149.

If the chief executive replaces a registration certificate under clause 147 the real estate salesperson must pay the prescribed fee for a replacement certificate and the replacement certificate continues to be subject to the same conditions and the term their certificate was subject to before being replaced.

Clause 148 requires the chief executive to keep a register of registration certificates and registration certificate applications. The provision also outlines the required content for the register (clause 148(3)) and provides that persons may, on payment of the fee prescribed under a regulation, inspect or get a copy of the details in the register (clause 148(4)).

Clause 149 imposes an obligation on real estate salespeople to give written notice to the chief executive about a prescribed change in the salesperson's circumstances (as described under a regulation) within 14 days of the change. A maximum penalty of 100 penalty units may apply for contraventions of the provision.

Clause 150 provides that a real estate salesperson must, if asked by a person with whom the sales person is dealing, produce the salesperson's registration certificate for inspection by the person. A maximum penalty of 100 penalty units may apply for contraventions of the provision.

Clause 151 prohibits a person from acting as a real estate salesperson (or holding out that the person is a real estate salesperson), unless the person holds a registration certificate (clause 151(1)). A maximum penalty of 100 penalty units may apply for contraventions of the provision.

However, clause 151(2) provides that a person does not act as a real estate salesperson only because the person while performing duties as an employee of a real estate agent at the real estate agent's registered office or other place of business:

- collects, and issues receipts for, rents; or
- gives a person a list, prepared by or for the real estate agent, of premises available for rent; or
- does something of an administrative nature relating to a thing the real estate agent does as a real estate agent.

Part 6 Disclosure requirements—licensees, real estate salespersons, property developers and marketeers

Division 1 Preliminary

Clause 152 provides that for this division, the term “obtain” includes being in any way concerned in obtaining.

Clause 153 gives the meaning of beneficial interest.

Division 2 Beneficial interest disclosure—licensees and real estate salespersons

Clause 154 provides that, if a property 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.

A property agent salesperson employed by the property agent commits an offence if the salesperson obtains from the client an option to purchase the property in which the salesperson has a beneficial interest.

It is an offence if a property agent sells the property if the agent obtains a beneficial interest in an option to purchase the property.

Clause 155 applies where property is placed by a person (*client*) with a property agent for sale, but does not apply if clause 154 applies.

Clause 155 provides the property agent, or a real estate salesperson employed by the property agent, commits an offence if the agent or salesperson obtains a beneficial interest in the property, unless the client is in substantially as good a position as the client would be if the property were sold at fair market value, and the agent or salesperson:

- obtains, before a contract for the sale of the property is entered into, the client’s written acknowledgement in the approved form that the client:
 - is aware that the property agent or real estate salesperson is interested in obtaining a beneficial interest in the property; and
 - consents to the property agent or real estate salesperson obtaining the interest; and
- acts fairly and honestly in relation to the sale.

Clause 156 provides that where a person is convicted of an offence against clause 155(2) or 155(3) and the court convicting the person is satisfied, on the balance of probabilities, that the person has recovered or retained an amount of commission from someone (the *client*) to which the person was not entitled, the court must order the person to pay the amount to the client.

The order must be made whether or not any penalty is imposed on the conviction. The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

This clause also does not prevent the client bringing a civil action against the person in relation to the offence.

Division 3 Disclosure of interest for residential property—licensees and real estate salespersons

Clause 157 provides that a residential property agent for the sale of residential property must disclose to any prospective buyer of the property:

- any relationship, and the nature of the relationship (whether personal or commercial), the agent has with an entity (the *referred entity*) to whom the agent refers the buyer for professional services associated with the sale;
- whether the agent derives or expects to derive any benefit from a referred entity and, if so, the amount or value of the benefit;
- the full name of the individual or the registered business name of the registered business that is the referred entity the agent derives or expects to derive any benefit from;
- the amount, value or nature of any benefit any entity has received, receives, or expects to receive in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property;
- the full name of the individual or the registered business name of the registered business that is an entity that has received, receives, or expects to receive a benefit in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property.

However, the requirement to disclose the full name of the individual or the registered business name of the registered business that is the referred entity the agent derives or expects to derive any benefit from does not apply if the benefit is the amount the residential property agent has received, receives, or expects to receive by way of commission from the seller for the sale.

The clause requires the disclosure to be given to the prospective buyer in the approved form, and acknowledged by the prospective buyer in writing on the approved form, before a contract for the sale of the residential property is entered into.

Clause 157(4) defines key terms for the provision including the terms residential property and residential property agent.

Division 4 Disclosure of interest for residential property—property developers

Clause 158 provides that a property developer marketing residential property must disclose to any prospective buyer of the property:

- any relationship, and the nature of the relationship (whether personal or commercial), the property developer has with an entity (a *referred entity*) to whom the developer refers the buyer for professional services associated with the sale;
- whether the property developer derives or expects to derive any benefit from a referred entity and, if so, the amount, value or nature of the benefit;
- the full name of the individual or the registered business name of the registered business that is the referred entity the property developer derives or expects to derive any benefit from;
- the amount, value or nature of any benefit any entity has received, receives, or expects to receive in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property;
- the full name of the individual or the registered business name of the registered business that is an entity that has received, receives, or expects to receive a benefit in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property;
- that the property developer holds an interest of at least 15% in the property.

The clause requires the disclosure to be given to the prospective buyer in the approved form, and acknowledged by the prospective buyer in writing on the approved form, before a contract for the sale of the residential property is entered into.

For the requirement to disclose the full name of the individual or the registered business name of the registered business that is the referred entity the property developer derives or expects to derive any benefit from, disclosure in compliance with the approved form is sufficient.

Clause 158(4) defines key terms for the provision including the term residential property.

Part 7 Residential property sales

Division 1 Preliminary

Clause 159 provides the definitions for part 7.

Division 2 Contracts this part applies to

Clause 160 sets out the contracts part 7 applies to.

Division 3 Accounting requirements for property developers for relevant contracts

Clause 161 provides that division 3 applies if:

- the seller under a relevant contract is a property developer; and
- a relevant contract provides for the payment by the buyer under the relevant contract of an amount for the purchase of property; and
- the buyer is not entitled under the relevant contract to receive a registrable instrument of transfer of the property in exchange for the part payment.

The clause also provides that division 3 does not apply if the part payment (for example, a deposit payable under the relevant contract) is secured by a prescribed guarantee given by a financial institution, for the buyer, in favour of the seller under which the financial institution is bound to pay, on demand, to the buyer the amount of the guarantee (whether or not the guarantee secures other obligations).

Clause 162 provides that a property developer commits an offence where they receive part payment and fail to pay it directly to the public trustee, or a law practice, or a property agent. Any provision of a relevant contract, or an instrument made in connection with the relevant contract, that otherwise provides for payment of the part payment is void.

Clause 163 provides that part payments are to be held in trust. If the part payment is paid to the public trustee, it is to be held by the public trustee in a trust account kept for this Bill. If the part payment is paid to an individual, it is to be held in a trust account kept for this Bill by the individual or, if the individual is a member of a firm or partnership, the firm or partnership of which the individual is a member.

The part payment must be dealt with by the public trustee, individual, firm or partnership in accordance with the law governing the operation of the public trustee's, individual's, firm's or partnership's trust account.

Division 4 Seller and seller's agent must give copy of particular property valuation to buyer

Clause 164 ensures that a buyer is to receive a copy of a property valuation that the buyer has paid for, before the relevant contract is entered into. Where a term of a relevant contract requires a buyer to pay for a valuation of the property, or the seller otherwise requires that the buyer must pay for a valuation, the buyer must receive a copy of the property valuation from the seller before the relevant contract is entered into, regardless of whether this is a term of the relevant contract or otherwise required by the seller.

Failure to do this is an offence which attracts a penalty of up to 200 penalty units, but it does not affect the validity of the relevant contract. The term of the relevant contract or requirement is only effective if the buyer receives the valuation and acknowledges receipt of

the valuation in writing. This must occur before the buyer enters into the relevant contract.

Division 5 Matters to be included in proposed relevant contract

Clause 165 imposes a disclosure obligation on a seller who gives a proposed relevant contract for the first time to a proposed buyer for signing. In accordance with clause 165(2), the seller must ensure the proposed relevant contract includes prescribed information about the cooling-off period, and recommending the buyer obtain an independent property valuation and legal advice about the contract before signing. Clause 165(3) specifies the location at which the prescribed information must appear in the contract. Under clause 165(4), subsections (2) and (3) do not apply to counter-offers provided certain conditions are satisfied. A maximum penalty of 200 penalty units may apply to contraventions of clauses 165(2) or (3).

Division 6 Waiving and shortening cooling-off periods

Clause 166 provides for the calculation of the cooling-off period for a relevant contract.

Clause 167 enables a relevant buyer to waive the cooling-off period for the relevant contract by giving written notice of the waiver to the seller (clause 167(1)). Also, under clause 167(2), a buyer under a relevant contract may shorten the cooling-off period for the contract by giving written notice to the seller.

Division 7 Terminating relevant contracts

Clause 168 provides the process for a buyer to terminate a relevant contract during the cooling-off period. Under clause 168(2), the seller may deduct from any deposit paid under the relevant contract an amount not greater than the termination penalty (defined in clause 159). Within 14 days after the contract is terminated, the seller must refund to the buyer any deposit paid under the contract, less the amount of the termination penalty if applied (clause 168(3)). Clause 168(4) provides that an amount payable to a buyer under clause 168(3) is recoverable as a debt.

Part 8 Trust accounts

Clause 169 requires a principal real estate agent, principal auctioneer or principal resident letting agent to open and keep a trust account in accordance with the Administration Act if an amount is likely to be received by the real estate agent, principal auctioneer or principal resident letting agent for a transaction, or with written directions for its use, when performing the activities authorised under their licence.

For the purposes of clause 169, an amount likely to be received by a licensee for a transaction or with written direction for its use includes deposit and purchase monies for a transaction. But, this does not include an amount payable to the licensee for a transaction in refund of an expense the licensee was authorised to incur and did incur and for which the licensee holds a receipt.

Part 9 QCAT Proceedings

Division 1 Preliminary

Clause 170 sets out the definitions of *licensee* and *real estate salesperson* for the purpose of Part 9.

Clause 171 provides that QCAT has jurisdiction to:

- hear and decide disciplinary matters involving a licensee or real estate salesperson;
- hear and decide applications under this Act relating to marketeers; and
- review decisions of the chief executive relating to licensing and registration.

Division 2 Disciplinary proceedings

Clause 172 sets out the grounds for starting a disciplinary proceeding against a licensee or real estate salesperson before QCAT. It also sets out the grounds for starting disciplinary proceeding before QCAT against a licensee that is an executive officer of a corporation.

Clause 173 provides that a disciplinary proceeding is started by the chief executive applying to QCAT (173(1)) and sets out what must be in the chief executive's application to QCAT (173(2)).

Division 3 Marketeer proceedings

Clause 174 provides the following are grounds for starting a proceeding against a marketeer for orders under clause 188:

- the marketeer has contravened or is contravening clauses 207, 208 or 209
- the marketeer is likely or proposing to engage in conduct that would contravene clauses 207, 208 or 209
- the marketeer is reasonably suspected of the above

Clause 175 provides that the chief executive may apply, as provided under the QCAT Act, to QCAT to conduct a marketeer proceeding. The application must state the grounds for starting the proceeding, the conduct constituting the grounds and that an application will be made for 1 or more orders under clause 188.

Division 4 Review proceedings

Clause 176 provides that a person who is dissatisfied with a decision of the chief executive made under a provision mentioned in schedule 1 may apply to QCAT to have the decision reviewed.

Clause 177 provides that a decision of the chief executive, other than a decision made under clause 76 or 142 being reviewed is stayed for the purpose of securing the effectiveness of the review. However, the period of a stay does not extend past the time when QCAT decides the application.

Clause 178 provides that QCAT may extend the time within which to seek review of a decision of the chief executive if it is satisfied:

- the application is made within 42 days after the person receives notice of the decision to be reviewed; and
- it is appropriate to extend time having regard to the application generally, and the justice of the matter generally.

No appeal lies against QCAT's decision under this clause.

Division 5 Proceedings generally

Subdivision 1 Reference committee

Clause 179 establishes a reference committee consisting of the commissioner for fair trading; and 2 community representatives who are not public service employees.

One of the community representatives must have a demonstrated interest in civil liberties and the other must be a person the Minister considers has appropriate and relevant experience in fair trading issues. Community representatives' appointments and terms and conditions of appointment are to be decided by the Governor in Council.

Clause 180 provides that it is the reference committee's function is to decide whether conduct of a marketeer that is being investigated under this Bill should be the subject of an application to QCAT for a public examination.

Clause 181 provides that where the chief executive considers that a public examination may help decide whether or not to start a marketeer proceeding against a marketeer, the chief executive may refer the conduct to the reference committee. After considering all relevant issues, the reference committee may authorise the chief executive to make an application to QCAT for a public examination.

The reference committee must not authorise the chief executive to make the application unless satisfied:

- it is unlikely further investigation of the conduct by an inspector will be effective for deciding whether to start a marketeer proceeding; and
- a public examination may help find out whether a marketeer has contravened clauses 207, 208 or 209; and
- it is in the public interest to make the application.

Subdivision 2 Public examinations

Clause 182 provides that QCAT may, on the chief executive's application, conduct a public examination that investigates the conduct of a marketeer to find out whether the marketeer has contravened clauses 207, 208 or 209.

The application may be made whether or not a marketeer proceeding has been started. This division applies to a public examination as if it were a hearing before QCAT.

Clause 183 provides that before the start of a public examination, QCAT must be satisfied each person to be examined has received written grounds for the public examination. On being satisfied QCAT must decide a time and place for the public examination and issue an attendance notice to each person to be examined.

If a person to be examined is a corporation QCAT must issue the attendance notice requiring a named executive officer of the corporation to attend QCAT for examination. The attendance notice must state the time and place for the public examination decided by QCAT and the person may make oral and written submissions at the public examination.

The chief executive must serve the attendance notice on the person to whom it was issued.

Clause 184 provides that where a person being examined at a public examination refuses to answer any question, and QCAT requires the person to answer the question, QCAT must advise the person:

- that if the answer might incriminate the person, the person may claim, before giving the answer, that giving the answer might incriminate the person; and
- the effect that making the claim will have on the admissibility of the answer in any proceeding against the person.

The person must answer the question, unless the person has a reasonable excuse. It is not a reasonable excuse to fail to answer the question that answering might tend to incriminate the person. The answer is not admissible in any criminal or civil proceeding against the person, other than:

- the public examination of a person; or
- a proceeding to review a reviewable decision (a decision mentioned in schedule 1); or
- an appeal against QCAT's decision to require the answer; or
- a perjury proceeding.

Subdivision 3 Stopping particular conduct

Clause 185 provides that QCAT may, by order, prohibit the marketeer from engaging in conduct that, alone or together with other conduct, is a contravention of clauses 207, 208 or 209, where a marketeer proceeding has been started against a marketeer and, on the chief executive's application, QCAT is satisfied, or is satisfied there is a reasonable suspicion, that

the marketeer has contravened, is contravening, or is likely or proposing to engage in conduct that would contravene clauses 207, 208 or 209.

It is an offence for a person to contravene an order under this clause.

QCAT may make an order under this clause on the chief executive's application made without notice to the marketeer but, in that case, QCAT must allow the marketeer a reasonable opportunity to 'show cause' why the order should not be confirmed. If QCAT, after considering the marketeer's evidence and representations, if any, and any further evidence or representations of the chief executive, is not satisfied the order should continue in force, QCAT must cancel the order.

In a proceeding against a person the making of an order under this clause is evidence of the facts or circumstances giving rise to the making of the order. An order under this clause has effect on the giving of a copy of the order to the marketeer.

Subdivision 4 QCAT's orders

Clause 186 provides that QCAT may make one or more of the specified orders against a person whom QCAT finds grounds exist to take disciplinary action. Orders QCAT may make in this circumstance include orders reprimanding a person, ordering a person to pay a fine or compensation, an order suspending a licence or registration certificate for a period or cancelling a licence or registration certificate, an order disqualifying a person from holding a licence or registration certificate, an order disqualifying a licence holder who is an executive officer of a corporation from being an executive officer of the licensed corporation, an order amending licence conditions, or an order making another order QCAT considers appropriate.

If QCAT makes an order cancelling an individual's licence or registration certificate, QCAT must also make an order that the person be disqualified from holding a licence or registration certificate.

However, QCAT may not disqualify a person from holding a licence or registration certificate if a disqualification order has previously been requested in a court proceeding under clause 227 of the Bill and has been denied.

Clause 187 provides that QCAT may, by order, prohibit the person who is doing, or is about to do, the thing (the prohibited person) from starting or continuing to do the thing, if QCAT is satisfied, on application by the chief executive, that a person is doing, or is about to do, something in contravention of this Bill. However, this clause does not apply if clause 185 applies.

QCAT may make an order under this clause on the chief executive's application made without notice to the prohibited person but, in that case, QCAT must allow the prohibited person a reasonable opportunity to show cause why the order should not be confirmed.

If QCAT, after considering the prohibited person's evidence and submissions, if any, and any further evidence or submissions of the chief executive, is not satisfied the order should continue in force, QCAT must rescind the order.

Contravention of an order under this clause is an offence. An order under this clause has effect on the giving of a copy of the order to the prohibited person.

Clause 188 states that if, in a marketeer proceeding, QCAT is satisfied a marketeer has contravened clauses 207, 208 or 209, QCAT may make the prescribed orders against the marketeer or another order QCAT considers appropriate to ensure the person complies with this Bill.

However, QCAT may make an order against a person who is not licensed or a real estate salesperson only on the basis of evidence, submissions and other information received in accordance with the evidentiary law and practice applicable to a civil proceeding in a Magistrates Court, where QCAT may make orders:

- against the marketeer that the person pay to the chief executive, within the time stated in the order, an amount of not more than the money value of for an individual—200 penalty units or for a corporation—1000 penalty units; and
- to pay to a person who has suffered financial loss, as compensation, an amount, decided by QCAT, up to the limit of a Magistrates Court’s civil jurisdiction.

If QCAT proposes to order a marketeer to pay an amount to the chief executive and compensation under these provisions and the marketeer does not have enough financial resources to pay both, QCAT must prefer to make an order for compensation. If QCAT orders a corporation to pay:

- an amount to the chief executive within the time stated in the order, an amount of not more than the money value of 1000 penalty units; or
- to a person who has suffered financial loss, as compensation, an amount, decided by QCAT, up to the limit of a Magistrates Court’s civil jurisdiction; and
- the corporation does not have enough financial resources to pay either or both the executive officers of the corporation are jointly and severally liable to pay any amount not paid by the corporation.

It is a defence to liability for an executive officer to prove that— relating to the conduct in question—the officer took all reasonable steps to ensure the corporation:

- did not contravene clauses 207, 208 or 209 (it is sufficient for the executive officer to prove that the act or omission that was the conduct in question was done or made without the officer’s knowledge despite the officer having taken all reasonable steps to ensure the corporation did not contravene clauses 207, 208 or 209); or the officer was not in a position to influence the conduct of the corporation in relation to the conduct in question.

Clause 189 provides what QCAT must consider to decide the amount a person may be ordered to pay under clause 188.

Subdivision 5 Chief executive's right of appeal

Clause 190 allows the chief executive to appeal to the appeal tribunal, as constituted under the QCAT Act, against a decision of QCAT on the ground of an error of law.

Part 10 Injunctions, undertakings, preservation of assets and civil penalties

Division 1 Injunctions

Clause 191 prescribes the grounds for which the District Court may grant an injunction.

Clause 192 provides that the chief executive or a person aggrieved by the respondent's conduct may apply to the District Court for an injunction.

Clause 193 provides that an injunction under Division 1 may be granted by the District Court against a respondent at any time.

Clause 194 provides that the District Court may exercise the power to grant an injunction to restrain a person 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 person has previously engaged in that kind of conduct.

The court may exercise the power to grant an injunction requiring a person 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 person has previously failed to do the act or thing. The court may grant an interim injunction until an injunction application is finally decided.

Clause 195 provides that the District Court may grant an injunction in the terms the court considers appropriate, including restraining a person from carrying on a regulated business for a stated period; or except in accordance with stated terms and conditions; or requiring a person to take specified action, such as disclosing or publishing information to remedy adverse consequences caused by the person's contravention.

Clause 196 states that when the chief executive applies for an injunction, no undertaking as to damages or costs may be required or made.

Division 2 Undertakings

Clause 197 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 Bill or a conduct provision prescribed under a regulation, 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 stops the conduct where the contravention is conduct consisting of a series of acts or omissions, and the chief executive accepts the undertaking, offence proceedings for the contravention may not be started against the person unless the chief executive withdraws the undertaking.

Clause 198 provides that the chief executive may accept an undertaking given by a person about anything for which the chief executive or an inspector has a function or power (such as, for example, an undertaking to publish corrective advertising).

Clause 199 provides that an undertaking may be varied or withdrawn by the person who gave the undertaking, with the chief executive's approval, or by the chief executive on particular grounds.

The chief executive must provide written notice to the person of the variation or withdrawal of an undertaking. The variation or withdrawal takes effect when the person receives the written notice.

Clause 200 provides that the chief executive may apply to the District Court to enforce an undertaking if the chief executive believes, on reasonable grounds, that a person bound by an undertaking has breached its terms. The clause also prescribed the orders the court may make if satisfied that the person has contravened a term in the undertaking.

The chief executive can apply to the court for an order that a security bond be forfeited to the State. The court may grant the order if satisfied that the person contravened the undertaking during the period for which the bond was given.

Clause 201 requires the chief executive to keep a register of undertakings. The chief executive may publish information contained in the register on the department's website. A person may inspect or access details of the register at a place decided by the chief executive or by using a computer, on payment of any fee that is prescribed by regulation.

Division 3 Preservation of assets

Clause 202 applies where any of the following proceedings have been started against a marketeer:

- a proceeding before the District Court for the grant of an injunction;
- a proceeding before the District Court about a contravention of an undertaking;
- a marketeer proceeding;
- a proceeding before the District Court under division 4 for a civil penalty.

On the chief executive's application, the District Court may make particular orders provide in the clause if satisfied that:

- it is necessary or desirable to preserve property held by or for the marketeer because the marketeer is or may become liable under this Bill:
 - to pay an amount to the chief executive; or
 - to pay compensation; or
 - to refund an amount; or
 - to transfer, sell or return other property; and
- it will not unduly prejudice the rights and interests of any other person.

Clause 202 also provides that an application and an order may be made without notice to, and in the absence of, the marketeer or the associate, but in that case the order must not be made for a period of more than 30 days. Subject to the requirements of an ex-parte order, the order may be expressed to operate:

- for a stated period; or
- until proceedings under any other provision of this Bill in relation to which the order was made have ended.

It is an offence for a person to whom an order is directed under this clause not to comply with the order.

Division 4 Civil penalties and compensation orders for particular contraventions

Clause 203 provides that this part applies if a person contravenes clauses 207, 208 or 209.

Clause 203 also provides that the chief executive may apply to the District Court for an order requiring the person to pay to the State a money penalty or to pay to a person who suffered financial loss because of the contravention an amount as compensation.

The application may be made together with any other application the chief executive may make under this part.

Clause 205 provides that this clause applies if the court is satisfied the person has contravened clauses 207, 208 or 209. The court may order the person to pay to the State a money penalty for each contravention up to the limit of the court's civil jurisdiction.

If satisfied another person has suffered financial loss because of the contravention, the court may order the person to pay as compensation, an amount decided by the court, up to the limit of the court's civil jurisdiction.

Where the court proposes to order an individual to pay a money penalty and compensation and the person does not have the resources to pay both, the court must prefer to make an order for compensation.

If the court orders a corporation to pay a money penalty or compensation and the corporation does not have enough financial resources to pay, either or both the executive officers of the corporation are jointly and severally liable to pay any amount not paid by the corporation.

It is a defence to a liability for an executive officer to prove that if the officer was in a position to influence the conduct of the corporation in relation to the conduct in question the officer took all reasonable steps to ensure the corporation did not contravene clauses 207, 208 or 209. It is sufficient for the executive officer to prove that the act or omission that was the conduct in question was done or made without the officer's knowledge. It is a defence to a liability for an executive officer to prove that the officer was not in a position to influence the conduct of the corporation in relation to the conduct in question

Clause 205 provides what the court must consider to decide an amount a person may be ordered to pay under clause 205.

Part 11 General contraventions and evidentiary matters

Division 1 General contraventions

Clause 206 provides that a real estate agent, auctioneer, resident letting agent, real estate salesperson or a person not authorised under part 2 the Bill but who acts as if the person was authorised under that part who dishonestly converts an amount that belongs to someone else, in the performance of the person's activities, to the person's or someone else's use, or who dishonestly renders an account of the amount knowing it to be false in a material particular, commits an offence. Importantly, this is to apply to a person who was a licensee or registered salesperson when they committed the offence, even if the person is no longer a licensee or registered salesperson.

The clause also allows for two or more instances of conduct relating to dishonest application of money by a person to be taken to constitute one alleged offence committed by the person over the period stated in the complaint or indictment in relation to the conduct, which may be charged and proceeded against on one charge.

A person also commits an offence if the person represents the person has received an amount, if the person knows the amount has not been received.

Clause 207 provides that a marketeer must not engage in conduct that is misleading or is likely to mislead, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property in Queensland.

Clause 208 provides that a marketeer must not engage in conduct that is, in all the circumstances, unconscionable, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property in Queensland.

Without limiting the matters to which regard may be had when deciding whether a marketeer has engaged in unconscionable conduct regard may be had to: \

- the relative strengths of the bargaining positions of the marketeer and the buyer of the property; and

- whether, because of conduct engaged in by the marketeer, the buyer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the marketeer; and
- whether the buyer was able to understand any documents relating to the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property; and
- whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the buyer or the person acting for the buyer by the marketeer in connection with the marketing of the property; and
- the amount for which, and the circumstances under which, the buyer could have acquired an equivalent or similar property from another person; and
- the extent to which the marketeer's conduct towards the buyer was consistent with the marketeer's conduct in similar transactions between the marketeer and other like buyers; and
- the requirements of any applicable code of conduct; and
- the extent to which the marketeer unreasonably failed to disclose to the buyer any intended conduct of the marketeer that might affect the interests of the buyer and any risks to the buyer arising from the marketeer's intended conduct, if the risks are risks the marketeer should have foreseen would not be apparent to the buyer; and
- the extent to which the marketeer failed to disclose to the buyer any relationships of the marketeer to other marketeers in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property, or anything required to be disclosed under this Bill; and
- the extent to which the marketeer was unwilling to negotiate the terms and conditions of any contract for the sale of the property with the buyer; and
- whether or not it was reasonably practicable for the buyer to negotiate for the alteration of, or to reject, any of the provisions of the contract for the property; and
- whether or not the buyer or a person who represented the buyer was reasonably able to protect the interests of the buyer because of the age or physical or mental condition of the buyer or the person who represented the buyer; and
- whether or not, and if so when, the buyer obtained, or an opportunity was made available to the buyer to obtain, independent legal, valuation or other expert advice; and
- the extent to which the provisions of the contract and the contract's legal and practical effect were accurately explained to the buyer and whether or not the buyer understood those provisions and their effect; and
- whether the marketeer took measures to ensure that the buyer understood the nature and implications of the transaction and, if so, the adequacy of those measures; and

- whether at the time the contract was entered into, the marketeer knew, or could have ascertained by reasonable inquiry of the buyer at the time, that the buyer could not pay in accordance with its terms or not without substantial hardship; and
- the extent to which the marketeer and the buyer acted in good faith; and
- any other relevant factor.

Clause 209 provides that a marketeer must not represent in any way to someone else anything that is false or misleading, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property in Queensland, including by:

- representing that the person has a sponsorship, approval or affiliation the person does not have; or
- making a false or misleading representation about the nature of the interest in the property, or
- the price payable for the property; or
- the location of the property; or
- the characteristics of the property; or
- the use to which the property is capable of being put or may lawfully be put; or
- the existence or availability of facilities associated with the property; or
- the value of the property at the date of the sale; or
- the potential income from the leasing of the property; or
- if the property has been previously sold, the date of the sale and the consideration for the sale; or
- how the purchase of the property may affect the incidence of income taxation on the buyer; or
- offering gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.

Clause 210 provides that Clauses 207, 208 or 209 which apply to conduct, whether happening in or outside Queensland, relating to residential property in Queensland are in addition to, and do not limit, any other law, written or unwritten, about conduct mentioned in them.

Clause 211 provides that a marketeer commits an offence if they unduly harass another person in connection with the sale or possible sale of residential property in Queensland.

Clause 212 provides that a licensee or real estate salesperson commits an offence if they represent in any way to someone else anything that is false or misleading in relation to the letting, exchange or sale of property including but not limited to:

- the value of the land at the date of sale; or
- the potential income from the leasing of the land; or
- if the land has been previously sold, the date of the sale and the consideration for the sale; or
- how the purchase of the land may affect the incidence of income taxation on the buyer.

Without limiting the matters to which regard may be had a under this clause, a representation is taken to be false or misleading, if it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the representation indicates that the state of affairs does exist. Also, if a person makes a representation in relation to a matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading.

The onus of establishing that the person had reasonable grounds for making the representation is on the person. It is not a defence to a prosecution for the defendant to prove that an agreement with the person was terminated or that the person did not enter into an agreement because of the representation.

This clause does not limit another Bill or law about false or misleading representations.

Clause 213 imposes a number of disclosure obligations on an auctioneer that arise if a person wanting to sell residential property asks the auctioneer for information about the price at which residential property to be offered for sale at auction is likely to be sold.

In accordance with clause 213(2), the auctioneer must give the seller a written notice stating that if the seller does not set a price at which the seller agrees to sell the offered property (*reserve price*), the offered property will be sold for the price offered by the highest of any bids made when the property is auctioned. A maximum penalty of 200 penalty units may apply for contravention of the provision.

Under clause 213(3), if the seller appoints the auctioneer to sell the offered property, the auctioneer must obtain from the seller before the offered property is auctioned a written notice stating the following:

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

A maximum penalty of 200 penalty units may apply for contravention of the provision.

In accordance with clause 213(4), an auctioneer must not help a seller decide the reserve price for offered property unless, before the seller decides the price, the auctioneer gives the seller:

- a copy of a comparative market analysis for the offered property; or
- if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the property agent decided the market value of the property.

A maximum penalty of 540 penalty units may apply for contravention of the provision.

Clause 214 applies if a residential property is to be, or may be, offered for sale by auction. The clause prohibits an auctioneer from disclosing to a person (other than a person acting for the seller in relation to the sale) the reserve price set for the offered property, or an amount the auctioneer considers is a price likely to result in a successful or acceptable bid for the offered property, or a price guide for the offered property (clause 214(2)). A maximum penalty of 540 penalty units may apply for contravention of the provision.

Clause 214 also provides that if an auctioneer gives a copy of a comparative analysis or a written explanation (*market information*) to a seller under section 213(4), the auctioneer must not give the market information to a person without the seller's written approval. A maximum penalty of 540 penalty units applies for a contravention of this clause.

Clause 215 applies if a person wanting to sell residential property asks a real estate agent for information about the price at which residential property that is to be, or may be, offered for sale, whether or not by auction, is likely to be sold.

In accordance with clause 215(2), if the real estate agent decides to give the person the information, the real estate agent must give the person:

- a copy of a comparative market analysis for the offered property; or
- if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the real estate agent decided the market value of the property.

A maximum penalty of 540 penalty units may apply for contravention of the provision.

Clause 216 imposes obligations on real estate agents not to disclose reserve or other prices relating to the sale of residential property. Similar to clause 214, clause 216(2) provides that if a property is to be offered for sale by auction, the real estate agent must not disclose to a person other than a person acting for the seller in relation to the sale:

- the reserve price set for the offered property; or
- an amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property; or

- a price guide for the offered property.

A maximum penalty of 540 penalty units may apply for contravention of the provision.

Under clause 217(3), if a property is not to be offered for sale by auction and the seller has instructed the real estate agent not to disclose the price at which the seller is willing to sell the offered property, the real estate agent must not disclose to a person, other than a person acting for the seller in relation to the sale:

- an amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property; or
- a price guide for the offered property.

A maximum penalty of 540 penalty units may apply for contravention of the provision.

If a real estate agent gives a copy of a comparative analysis or a written explanation (*market information*) to a seller under section 215(2), the real estate agent must not give the market information to a person without the seller's written approval. A maximum penalty of 540 penalty units may apply for a contravention of the provision.

Clause 217 provides that where the chief executive reasonably believes that a marketeer has made a representation in contravention of clause 209 (1) or (2), the chief executive may ask the person by written notice to give to the chief executive written proof that supports the representation. The notice must:

- state a day, at least 14 days after the day the notice is given to the person, by which the person must give the proof to the chief executive; and
- warn the person it is an offence to fail to comply with the notice by the stated day, unless the person has a reasonable excuse for the failure to comply.

The person commits an offence if they fail to comply with the notice by the stated day, unless they have a reasonable excuse for the failure to comply. Self-incrimination is deemed a reasonable excuse.

Clause 218 provides that where the chief executive reasonably believes a licensee or real estate salesperson has made a representation in contravention of clause 212(1) or (2), the chief executive may ask the person by written notice to give written proof supporting the representation. The notice must:

- state a day, at least 14 days after the day the notice is given to the person, by which the person must give the proof to the chief executive; and
- warn the person it is an offence to fail to comply with the notice by the stated day, unless the person has a reasonable excuse for the failure to comply.

The person commits an offence if they fail to comply with the notice by the stated day, unless they have a reasonable excuse for the failure to comply. Self-incrimination is deemed a reasonable excuse.

Clause 219 provides that a licensee or a real estate salesperson commits an offence if they charge a fee for the provision, preparation or completion of a document for a transaction relating to, or arising out of, the performance of a licensee's activities.

Clause 220 prohibits a person from making false or misleading statements to the chief executive or a public service employee.

Clause 221 prohibits a person from giving a document containing false or misleading information to the chief executive or a public service employee, or making an entry in a document required or permitted to be made or kept under the Bill knowing the entry to be false or misleading.

Clause 222 provides that it is an offence for a person to, for reward, supply, or undertake to supply, or advertise, or hold out in any way that the person will supply to any person addresses or other particulars of:

- places of residence that are to let; or
- places of residence or land or interests in places of residence or land that are for sale.

This does not apply to a property agent that has been appointed by the landlords or sellers of the places of residence or land or interests in the places of residence or land to perform an activity and has the landlord's or seller's consent to supply the particulars.

It is an offence for a person to make an unsolicited invitation to another person to attend a property information session unless the person is a property developer or a property agent or someone acting for the developer or agent.

Division 2 Evidentiary matters

Clause 223 makes provision for evidentiary matters in relation to proceedings under the Bill.

Clause 224 provides that an entry in a document 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.

Division 3 Proceedings

Clause 225 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 more than 2 years imprisonment) is 200 penalty units or 1 year's imprisonment.

The prosecution may elect for an indictable offence to be heard by way of summary proceeding under the *Justices Act 1886* or on indictment. If a person charged with an

indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted on indictment, the magistrate must not decide the charge by way of summary proceeding and must proceed by way of committal proceeding.

Clause 226 provides for the responsibility of a person for the acts or omissions of a representative of the person in a proceeding for an offence. If a person's state of mind is relevant in relation to a particular act or omission, it is enough to show that the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority, and the representative had the state of mind.

The act or omission of a person's representative, acting within the scope of the representative's actual or apparent authority, is taken to be the act or omission of the person, unless the person can prove that the person could not have prevented the act or omission with the exercise of reasonable diligence.

Clause 227 provides that a court may, in addition to any penalty it may impose, order that a licensee's licence or a real estate salesperson's registration certificate be suspended for a stated period or cancelled if the licensee or real estate salesperson has been convicted of an offence against clauses 202(6), 211(1) or 219(4).

The court may also order that a person convicted of an offence against this Bill be disqualified from holding a licence or registration certificate under this Bill for a stated period or permanently. The court may make an order on the chief executive's application or on its own initiative.

Where an order is made by a court on the court's own initiative, the court must cause a copy of the order to be given to the chief executive.

Clause 228 provides that a court may, in addition to any other penalty it may impose on a person convicted of an offence against clauses 202(6), 211(1) or 219(4), order that:

- if the person is a licensee or a property agent salesperson the licensee's licence or property agent salesperson's registration certificate be suspended for a stated period or cancelled; or the person be disqualified from holding a licence or registration certificate under this Bill for a stated period or permanently; or
- whether or not the person is a licensee or a property agent salesperson—the person be disqualified from holding a licence or registration certificate under this Bill for a stated period or permanently.

The court may also make any other order QCAT may make in a marketeer proceeding. However, if the court makes an order for compensation, the court may order the payment of an amount up to the limit of the court's civil jurisdiction.

The court may make an order under this clause on the chief executive's application or on its own initiative. If an order is made by a court under this clause on the court's own initiative, the court must cause a copy of the order to be given to the chief executive.

Clause 229 provides for how a charge involving a false or misleading statement, representation or entry, of false or misleading information should be stated.

Part 12 General

Clause 230 provides that if the Minister or chief executive is satisfied it is in the public interest to do so, they may make or issue a public statement identifying and giving warnings or information about:

- contraventions of the code of conduct that have resulted in disciplinary action and persons who commit the contraventions;
- business practices regulated under this Bill that are unfair and persons who engage in the unfair practices;
- the commission of offences against this Bill, and persons who commit the offences.

The statement may identify particular contraventions, business practices, offences and persons.

Clause 231 provides that nothing in this Bill affects or limits any civil remedy that a person may have against a licensee or another person in relation to any matter.

Clause 232 provides that nothing in this Bill limits the *Criminal Proceeds Confiscation Act 2002*.

Clause 233 provides that the chief executive may delegate the chief executive's powers, other than power under clause 230, to an appropriately qualified public service employee.

Clause 234 provides that the chief executive may approve forms for use under this Bill.

Clause 235 provides that a regulation made under this Bill may provide for conduct standards for any of the following:

- auctioneers in carrying on auctioneering practice;
- real estate agents or real estate salespersons in carrying on real estate agency practice;
- resident letting agents in carrying on resident letting agency practice.

A regulation providing for a conduct standard is a prescribed conduct provision.

Clause 236 provides that the Governor in Council may make regulations under this Bill. Without limiting this ability, a regulation may be made about the following:

- fees, including the refunding of fees payable under this Bill;
- imposing a penalty for contraventions of regulations of not more than 20 penalty units;

- imposing limits on out-of-pocket expenses incurred in the performance of activities under a licence;
- the keeping of records, including the form in which a record is kept;
- the keeping of receipts and evidence of expenditure;
- the length of time a document required to be kept under this Bill is to be kept.

Part 13 Repeal

Clause 237 repeals the *Property Agents and Motor Dealers Act 2000*, No. 62.

Part 14 Transitional provisions

Division 1 Preliminary

Clause 238 provides the definitions for part 14.

Division 2 Provisions for licences and registration certificates

Subdivision 1 Licences and registration certificates in force under PAMD ACT

Clause 239 provides for the transitional arrangements for existing licensees.

A person who was the holder of a resident letting agent licence under the PAMD Act immediately before the commencement of the Bill is taken to hold a resident letting agent licence under the Bill (a transitioned licence).

A person who was the holder of a real estate agent's licence under the PAMD Act immediately before the commencement of the Bill is taken to hold a real estate agent licence under the Bill (also a transitioned licence).

A person who was the holder of a pastoral house licence under the PAMD Act immediately before the commencement of the Bill is taken to hold the following transitioned licences: an auctioneer licence under the Bill, a chattel auctioneer licence under the Motor Dealers and Chattel Auctioneers Bill 2013 and a real estate agent licence under the Bill (each a transitioned licence).

A person who was the holder of a pastoral house director's licence or a pastoral house manager's licence under the PAMD Act immediately before the commencement of the Bill is taken to hold a real estate agent licence under the Bill (also a transitioned licence).

A person who was the holder of a pastoral house auctioneer's licence under the PAMD Act immediately before the commencement of the Bill is taken to hold the following transitioned

licences: an auctioneer licence under the Bill and a chattel auctioneer licence under the Motor Dealers and Chattel Auctioneers Bill 2013 (each a transitioned licence).

A person who was the holder of an auctioneer's licence under the PAMD Act immediately before the commencement of the Bill is taken to hold the following transitioned licences: an auctioneer licence under the Bill and a chattel auctioneer licence under the Motor Dealers and Chattel Auctioneers Bill 2013 (each a transitioned licence).

A person who was the holder of a motor dealer's licence under the PAMD Act immediately before the commencement of the Bill is taken to hold a motor dealer licence under the Motor Dealers and Chattel Auctioneers Bill 2013 (also a transitioned licence).

A person who was the holder of a commercial agent's licence under the PAMD Act immediately before the commencement of the Bill is taken to hold a debt collector licence under the Bill (also a transitioned licence).

Clause 240 provides for the transitional arrangements for existing registration certificate holders.

A person who was the holder of a registration certificate as a real estate salesperson or a property developer salesperson under the PAMD Act immediately before the commencement of the Bill is taken to hold a registration certificate as a real estate salesperson under the Bill (a transitioned certificate).

A person who was the holder of a registration certificate as a pastoral house salesperson under the PAMD Act immediately before the commencement of the Bill is taken to hold a registration certificate as a real estate salesperson under the Bill, an auctioneer licence under the Bill, and a chattel auctioneer licence under the Motor Dealers and Chattel Auctioneers Bill 2013 (each a transitioned certificate or a transitioned licence).

A person who was the holder of a registration certificate as a trainee auctioneer under the PAMD Act immediately before the commencement of the Bill is taken to hold an auctioneer licence under the Bill and a chattel auctioneer licence under the Motor Dealers and Chattel Auctioneers Bill 2013 (each a transitioned licence).

A person who was the holder of a registration certificate as a motor salesperson under the PAMD Act immediately before the commencement of the Bill is taken to hold a motor salesperson registration certificate under the Motor Dealers and Chattel Auctioneers Bill 2013 (a transitioned certificate).

A person who was the holder of a registration certificate as a commercial subagent under the PAMD Act immediately before the commencement of the Bill is taken to hold a debt collector subagent registration certificate under the Debt Collectors (Field Agents and Collection Agents) Bill 2013 (a transitioned certificate). Also, for a transitioned certificate that is a debt collector subagent registration certificate, a reference to the transitioned certificate in this part includes (if the context permits) a reference to registration as a subagent under the Debt Collectors (Field Agents and Collection Agents) Bill 2013.

Clause 241 applies to any applications for the renewal of a licence or registration certificate, amendment of conditions of a licence or registration certificate, or appointment of a substitute

person in charge, which were made under the PAMD Act but not yet decided before the commencement of the Bill.

Clause 241 provides that these applications are taken to be applications under the relevant Act for the transitioned licences or transitioned certificates provided for in clause 239 and 240. In addition, any review or appeal in relation to the application must also be decided under the relevant Act.

Clause 242 applies if a request to deactivate a licence (that is considered a transitioned licence under clause 239) was made under the PAMD Act and the request has not been decided before the commencement. The request to deactivate the licence is taken to be a request under the relevant Act for the transitioned licence or licences. In addition, the request, and any review or appeal in relation to the request, must be decided under the relevant Act.

Clause 243 provides that if immediately before the commencement, an existing licence or registration certificate was subject to a condition, the condition continues to apply so far as practicable and with necessary changes, to each transitioned licence or transitioned registration certificate for the existing licence or existing registration certificate.

Clause 244 provides that if, immediately before the commencement, an existing licence or existing registration certificate was suspended, each transitioned licence or transitioned registration certificate for the existing licence or existing registration certificate continues to be suspended under the relevant Act for the transitioned licence or transitioned registration certificate. In addition, the terms of the suspension continue to apply, so far as practicable and with necessary changes, to the transitioned licence.

Clause 245 transitions deactivated licences (except for deactivated property developer licences or property developer director licences as property developers and property developer directors are no longer required to hold a licence under the Bill) under the PAMD Act in to the licensing framework of the relevant Act for the type of licence. Clause 245 applies if a licence was deactivated under the PAMD Act immediately before the commencement and the licence is a transitioned licence or licences. The deactivation continues in force under the relevant Act for the transitioned licence or licences.

In addition, a person may ask the chief executive to reactivate the transitioned licence or licences under the relevant Act.

Clause 246 ensures transitioned licences and transitioned registration certificates expire on the earlier of the following days:

- the day the licence or certificate would have ended if the PAMD Act had not been repealed;
- the day it is cancelled or surrendered under the relevant Act for the transitioned licence or transitioned certificate.

However, a transitioned licence, that is an auctioneer licence or chattel auctioneer licence, for an existing registration certificate as a trainee auctioneer expires on the earlier of the following days, and can not be renewed:

- the day that is 1 year after the commencement;
- the day it is cancelled or surrendered under the relevant Act for the licence.

This transitional arrangement is aimed at ensuring trainee auctioneers can continue to perform auctioning functions; however, as the level of training a trainee auctioneer is required to undertake is significantly less than an auctioneer, a transitioned trainee auctioneer licence is only valid for one year. During this time, trainee auctioneers are expected to undertake the necessary training requirements to obtain an auctioneer licence under the Bill or a chattel auctioneer licence under the Motor Dealers and Chattel Auctioneers Bill 2013.

Clause 247 provides that a transitioned licence or transitioned certificate may be dealt with (for example, by amending the conditions of the transitioned licence or transitioned certificate) under the relevant Act for the licence or certificate as if it were a licence or registration certificate issued under the relevant Act.

Clause 248 applies to an auctioneer licence or chattel auctioneer licence that is the transitioned licence for an existing registration certificate as a pastoral house salesperson or trainee auctioneer. In this circumstance, the licensee can not be a principal licensee under the relevant Act in relation to the licence. The policy justification for this limitation is because trainee auctioneers and pastoral house salespersons are not required to undertake the same level of training (including in relation to the operation of trust accounts) as persons that are licensed as auctioneers.

Clause 248 also provides that the chief executive may impose conditions on the licence the chief executive considers necessary for the proper performance of the activities authorised by the licence. If the chief executive decides to impose a condition on the licence, the chief executive must give the licensee an information notice about the decision within 14 days after the decision is made.

Clause 249 provides that an appointment under the PAMD Act continues in force after the commencement as an appointment for the relevant transitioned licence. Clause 249 also provides that an existing appointment ends on the day it would end according to its terms (except for sole or exclusive agency appointments) and the appointment continues according to its terms, with necessary changes including to accommodate the licence framework and categories of the Bill.

A sole or exclusive agency appointment ends on the day it ends according to its terms or the end of 60 days after the appointment is made, whichever is earlier.

Clause 250 provides that an existing appointment of a nominated person as a substitute licensee continues under the relevant Act, subject to its terms with any necessary change, for the transitioned licence or licences as an appointment made for the holder of the transitioned licence or licences.

Subdivision 2 Other provisions

Clause 251 declares that, to remove any doubt, on the repeal of the PAMD Act, a property developer licence and a property developer director's licence (and any applications for these licences made under the PAMD Act) end.

A regulation made under the Bill in accordance with clause 236 may provide for, if applicable, the refunding of fees payable (including for property developers whom no longer need a licence) under the Bill or, as provided for in clause 271, the PAMD Act.

Clause 252 provides that an application for the issue of a licence or a registration certificate, made under the PAMD Act but not yet decided before the commencement of the Bill is taken to be an application for a licence or licences or registration certificate under the relevant Act (consistent with the manner by which existing licensees and registration certificate holders were transitioned to the category under a relevant Act in clause 239 and clause 240) as set out below. In addition, any review or appeal in relation to the application must be decided under the relevant Act.

An application for a resident letting agent's licence is taken to be an application for a resident letting agent licence under the Bill.

An application for a real estate agent's licence is taken to be an application for a real estate agent licence under the Bill.

An application for a pastoral house licence is taken to be an application for an auctioneer licence and a real estate agent licence under the Bill as well as an application for a chattel auctioneer licence under the Motor Dealers and Chattel Auctioneers Bill 2013.

An application for a pastoral house director's licence is taken to be an application for a real estate agent licence under the Bill.

An application for a pastoral house manager's licence is taken to be an application for a real estate agent licence under the Bill.

An application for an auctioneer's licence is taken to be an application for an auctioneer licence under the Bill and an application for a chattel auctioneer licence under the Motor Dealers and Chattel Auctioneers Bill 2013.

An application for a motor dealer's licence is taken to be an application for a motor dealer licence under the Motor Dealers and Chattel Auctioneers Bill 2013.

An application for a commercial agent's licence is taken to be an application for a debt collector licence under the Debt Collectors (Field Agents and Collection Agents) Bill 2013.

An application for registration as a real estate salesperson is taken to be an application for registration as a real estate salesperson under the Bill.

An application for registration as a pastoral house salesperson is taken to be an application for registration as a real estate salesperson under the Bill as well as an application for an auctioneer licence under the Bill and an application for a chattel auctioneer licence under the Motor Dealers and Chattel Auctioneers Bill 2013.

An application for registration as a motor salesperson is taken to be an application for registration as a motor salesperson under the Motor Dealers and Chattel Auctioneers Bill 2013.

An application for registration as a commercial subagent is taken to be an application for registration as a subagent under the Debt Collectors (Field Agents and Collection Agents) Bill 2013.

Clause 253 provides that an application and any subsequent review or appeal for the restoration of a licence or registration certificate made under the PAMD Act but not yet decided before the commencement of the Bill, is to be decided in accordance with the provisions of the Bill or relevant Act as if the application was for the restoration of a transitioned licence or transitioned registration certificate under clause 239 or 240 (each a relevant authority).

The expired licence or registration certificate is taken to continue in force as the relevant authority until the application is decided or withdrawn under the relevant Act. The application, the decision and any review or appeal in relation to the application for the restoration of the expired licences or registration certificates is to be decided as if the expired licence or registration certificate were the relevant authority.

Clause 254 provides that a person may apply for restoration of a licence or registration certificate held under the PAMD Act, as if the licence or registration certificate was a transitioned licence or transitioned registration certificate under clause 239 or 240 (each a relevant authority) provided that the person's licence or certificate expired within 3 months before the commencement of the Bill.

The application, the decision and any review or appeal in relation to the application for the restoration of the expired licences or registration certificates is to be decided as if the expired licence or registration certificate were the relevant authority.

The expired licence or registration certificate is taken to continue in force as the relevant authority until the application is decided or withdrawn under the relevant Act.

Clause 255 provides transitional arrangements for previously refused applications under the PAMD Act. Where a person has made an application under the PAMD Act for the issue of a licence or registration certificate and the application was refused before commencement of the Bill, the person may not make another application for the issue of a licence or registration certificate under the relevant Act, for 3 months after the day the chief executive gave the person an information notice for the refusal. If the applicant has applied to QCAT to review the chief executive's decision and the decision is confirmed, the applicant must not make another application for 3 months after the day the decision is confirmed.

However, this prohibition does not apply to a corporation if the chief executive is satisfied that, because of a genuine sale of the corporation, no person who was a shareholder of, held a beneficial interest in, or was in a position to control or influence the affairs of the corporation when the licence was cancelled is a shareholder of, holds a beneficial interest in, or is in a position to control or influence the affairs of the applicant corporation.

Clause 256 provides that reviews of a decision of the chief executive not yet decided before the commencement may continue (and commence if the person could have applied under section 501 of the PAMD Act) as if the PAMD Act had not been repealed.

Division 3 Provisions about pre-commencement conduct

Clause 257 applies if before the commencement a ground existed for starting disciplinary action under the PAMD Act against a former licensee or former registered employee and provides that prescribed action may be taken against the person on that ground under the relevant Act as if the ground were a ground for starting a proceeding for the prescribed action under the relevant Act.

Clause 257 also provides that if before the commencement QCAT had started but not finished disciplinary action under the PAMD Act, the action may be finished under the PAMD Act as if the PAMD Act had not been repealed. If QCAT makes a decision in this circumstance that applies to a transitioned licence or transitioned certificate, the decision must be given effect under the relevant Act in relation to the transitioned licence or transitioned certificate.

Clause 258 provides that an existing injunction continues to be a valid injunction under the relevant Act according to its terms. In addition, the provisions of the relevant Act relating to injunctions apply to an existing injunction.

If an existing injunction relates to a person's existing licence or existing registration certificate, the injunction is taken to relate to the person's transitioned licence or licences or transitioned registration certificate.

If before the commencement the chief executive applied to the District Court for an injunction under the PAMD Act and the District Court has not decided the application, the application may be heard and decided under the PAMD Act as if the PAMD Act had not been repealed.

Clause 258 also provides what the District Court may, on application by the chief executive or a person aggrieved by the respondent's conduct, grant an injunction under a relevant Act, in addition to any other power to grant injunctions under the relevant Act if the court is satisfied a person has before the commencement engaged in conduct that constituted the following and the conduct would result in the grant of an injunction under the relevant Act:

- a contravention of PAMD Act or a repealed code of conduct; or
- an attempt to contravene PAMD Act or a repealed code of conduct; or
- aiding, abetting, counselling or procuring a person to contravene PAMD ACT or a repealed code of conduct; or
- inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene PAMD Act or a repealed code of conduct; or
- being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the PAMD Act or a repealed code of conduct; or
- conspiring with others to contravene the PAMD Act or a repealed code of conduct; and

Clause 259 provides that an existing undertaking continues to be a valid undertaking under the relevant Act according to its terms and that the provisions of the relevant Act relating to the undertaking apply to an existing undertaking.

If an existing undertaking relates to a person's existing licence or registration certificate, the undertaking is taken to relate to the person's transitioned licence, transitioned licences or transitioned registration certificate.

If the chief executive reasonably believes a person has, before the commencement, contravened or been involved in a contravention of the PAMD Act or a repealed code of conduct, the chief executive may ask for an undertaking under the relevant Act as if a reference to 'this Act' in the provisions of the relevant Act about undertakings were a reference to the PAMD Act and a reference to a 'prescribed conduct provision' in the provisions of the relevant Act about undertakings were a reference to the repealed code of conduct.

If, before the commencement the chief executive applied to the District Court for an order under the PAMD Act, section 571; and the District Court has not decided the application, the application may be heard and decided under the PAMD Act as if the PAMD Act had not been repealed.

Clause 260 generally provides that if a person is alleged to have committed an offence against the PAMD Act before the commencement, proceedings for the offence may be started or continued, and a court may hear and decide the proceedings under the PAMD Act, as if the PAMD Act had not been repealed.

Clause 261 provides that if an infringement notice offence under the *State Penalties Enforcement Act 1999* was committed against the PAMD Act by a person before the commencement and no infringement notice had been served on the person before the commencement, an infringement notice may be served on the person, and the infringement notice may be dealt with, as if the PAMD Act had not been repealed.

Clause 262 states that a fine ordered to be paid to the chief executive under the PAMD Act that has not been paid or a fee incurred under the PAMD Act that has not been paid before the commencement may be recovered after the commencement as a debt owing to the chief executive in a court with jurisdiction to recover debts up to the amount of the fine or fee.

Clause 263 provides that if proceedings for an offence against the beneficial interest provisions of the PAMD Act are started or continued under clause 260 of the Bill, and the proceedings result in a person being convicted of an offence, the relevant sections of the PAMD Act apply to the person and the court convicting the person as if the PAMD Act had not been repealed.

Clause 264 provides if, before the commencement, a ground existed for starting a marketeer proceeding against a person under the PAMD Act, a marketeer proceeding may be taken against the person on that ground under the PAMD Act as if the PAMD Act had not been repealed.

If, before the commencement, QCAT had started but not finished a marketeer proceeding under the PAMD Act, the marketeer proceeding may be finished under the PAMD Act as if the PAMD Act had not been repealed.

Division 4 Preservation of existing rights of buyers

Clause 265 provides that the PAMD Act sections 150 and 189 continue to apply to a contract for the sale of land entered into before the commencement as if the PAMD Act had not been repealed.

Clause 266 provides that chapter 11 of the PAMD Act continues to apply to relevant contracts (as defined by section 364 of the PAMD Act) entered into before the commencement of the Bill that have not yet settled.

Clause 267 provides for continuation of unexpired statutory warranties for used motor vehicles sold by pre-commencement auctioneers. The clause applies where a pre-commencement auctioneer sold a warranted vehicle mentioned in the PAMD Act section 237(1) – that is the vehicle was owned by the auctioneer or sold on consignment for another auctioneer or motor dealer – to a person other than a motor dealer or auctioneer, and on commencement the warranty period had not ended. In such cases, the relevant warranty provisions continue to apply to the vehicle as if the PAMD Act had not been repealed.

Clause 268 provides for continuation of unexpired statutory warranties for used motor vehicles sold by pre-commencement motor dealers. The clause applies where a pre-commencement motor dealer sold a warranted vehicle mentioned in the PAMD Act section 315(1) – that is the vehicle that was owned by the motor dealer or sold on consignment for another auctioneer or motor dealer – to a person other than a motor dealer or auctioneer, and on commencement the warranty period had not ended. In such cases, the relevant warranty provisions continue to apply to the vehicle as if the PAMD Act had not been repealed.

Division 5 Other provisions

Clause 269 provides that if a reference committee has been formed under the repealed Act, section 528AA and is still current immediately before the commencement, each appointment to the reference committee as a community representative continues under the Bill for the unexpired term of the appointment.

If the appointment was subject to a condition, the person appointed is taken to be subject to a condition in the same terms.

If, under section 528AC of the repealed Act, the reference committee has authorised the chief executive to make an application to QCAT for a public examination under chapter 14, part 5, division 8 of the PAMD Act, the authorisation continues under the Bill.

Clause 270 provides that a person may inspect or get a copy of details of registers kept under the PAMD Act to the same extent and on the payment of any fee that would apply if the PAMD Act had not been repealed.

Clause 271 provides that a regulation may provide for the refunding of fees paid under the PAMD Act.

Part 15 Amendment of the Body Corporate and Community Management Act 1997

Clause 272 makes consequential amendments to the *Body Corporate and Community Management Act 1997* (BCCM Act) to provide for a reference to the Bill in that Act.

Clause 273 removes the definitions “attached” and “electronic communication” from section 205A of the BCCM Act.

Clause 273 also replaces the definition of “residential property” provided for in section 205A of the BCCM Act with the definition of “residential property” provided for in the Bill.

Clause 274 omits section 205B of the BCCM Act.

Clause 275 omits the existing requirement under section 206(5) of the BCCM Act for an information sheet in the approved form to be attached to a contract, if the contract is in relation to a lot that is not residential property, when the contract is given to the buyer.

Clause 275 also omits the corresponding right for a buyer to terminate an unsettled contract in relation to a lot that is not residential property if the seller has not complied with the requirement under subsection (5) of section 206 of the BCCM Act to provide an information sheet to the buyer.

However, as a disclosure statement will continue to be required under section 206(1) of the BCCM Act, *clause 275* also ensures a buyer may continue to terminate the contract that has not already been settled, if the seller has not complied with subsection (1) of section 206 of the BCCM Act.

The clause also omits the power for a form to be approved, under section 320 of the BCCM Act, for an information sheet for a lot that is residential property, and makes a necessary consequential amendment to re-number subsection 206(8).

Clause 276 omits section 206A of the BCCM Act, which provided for contract termination rights in particular circumstances if an existing lot, the subject of the contract, is residential property in a community titles scheme and the seller or the seller’s agent failed to give the clear statement relating to an information sheet in the approved form as required by the *Property Agents and Motor Dealers Act 2000*.

Clause 277 omits section 207 of the BCCM Act and inserts a new section that provides that when a contract for the sale of a lot that is residential property is entered into, the contract provisions include the disclosure statement (as provided for in section 206 for an existing lot or section 213 for a proposed lot) and all material accompanying the disclosure statement.

Clause 278 replaces subsections (5), (5A) and (6) of section 213 of the BCCM Act with a new subsection that provides if the contract has not already been settled, the buyer may terminate the contract if the seller has not complied with subsection (1) of section 213, which

requires a disclosure statement to be provided to a buyer of a proposed lot in a community titles scheme before the contract is entered into.

Clause 279 omits section 213A of the BCCM Act, which provided for contract termination rights in particular circumstances if a lot, the subject of the contract, was a lot proposed to be included in a community titles scheme and the seller or the seller's agent failed to give the clear statement relating to an information sheet in the approved form as required by the *Property Agents and Motor Dealers Act 2000*.

Clause 280 inserts a new heading for section 215 of the BCCM Act and omits subsection (2) of section 215 of the BCCM Act.

Clause 281 provides for transitional provisions to accommodate the changes to sections 205A, 206A, 207, 213A and 215 of the BCCM Act.

In particular, clause 281 provides that former sections 205A, 206A and 207 of the BCCM Act continue to apply to a contract for the sale of a lot included in a community titles scheme entered into before the commencement that has not settled.

Clause 281 also provides that former sections 213A and 215 of the BCCM Act continue to apply to a contract for the sale of a lot proposed to be included in a community titles scheme entered into before the commencement that has not settled.

Clause 282 omits the definitions "attach" and "electronic communication" from schedule 6 of the BCCM Act.

Part 16 Minor and consequential amendments

Clause 283 provides that schedule 2 amends the Acts it mentions.

Schedule 1 Decisions subject to review

Schedule 1 sets out the clause references to decisions of the chief executive that are subject to review by QCAT under clause 175.

Schedule 2 Acts amended

Schedule 2 contains consequential amendments to the Act (when the Bill is enacted), as well as the *Building Units and Group Titles Act 1980*, *Land Sales Act 1984*, *Legal Profession Act 2007*, *Mixed use Development Act 1993*, *Neighbourhood Disputes (Dividing Fences and Tress) Act 2011*, *Retirement Villages Act 1999*, *Sanctuary Cove Resort Act 1985* and *South Bank Corporation Act 1989*.

Schedule 3 Dictionary

Schedule 3 sets out the dictionary containing the definitions of particular words used in the Bill.