



Queensland

Motor Dealers and Chattel Auctioneers Bill 2013



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Contents

		Page
Part 1	Preliminary	
Division 1	Introduction	
1	Short title	14
2	Commencement	14
3	Act binds all persons	14
4	Relationship with Fair Trading Inspectors Act 2013	14
Division 2	Exemptions	
5	Financial institutions and trustee companies	15
6	Particular auctions	15
7	Administrators etc.	16
Division 3	Object of Act	
8	Main object	18
Division 4	Interpretation	
9	Definitions	19
10	Meaning of beneficial interest	19
11	Meaning of in charge	21
12	Meaning of motor vehicle	22
13	Meaning of sale by auction	23
Part 2	Licensing	
Division 1	Categories of licence	
14	Categories of licence	24
Division 2	Limited motor dealer licence	
15	Limited motor dealer licence	24
Division 3	How to obtain a licence	
16	Steps involved in obtaining a licence	25

Contents

Division 4	Applications for licence	
17	Application for licence.	25
18	Applicant must state business address	26
19	Particular persons can not make application	27
20	Requirement to give information or material about application or request	28
Division 5	Suitability of applicants and licensees	
21	Suitability of applicants and licensees—individuals	29
22	Suitability of applicants and licensees—corporations	30
23	Chief executive must consider suitability of applicants and licensees	30
24	Public trustee is a suitable person	32
25	Chief executive of department is a suitable person	33
26	Investigations about suitability of applicants, nominated persons and licensees	33
27	Notice of change in criminal history	34
28	Costs of criminal history report.	34
29	Use of information obtained under s 26 or s 27	35
30	Requesting and using information from commissioner—identified participant	36
31	Confidentiality.	37
Division 6	Eligibility for licence	
Subdivision 1	Motor dealer licence	
32	Eligibility for motor dealer licence.	37
Subdivision 2	Chattel auctioneer licence	
33	Eligibility for chattel auctioneer licence.	38
Subdivision 3	Chief executives and corporation sole	
34	Public trustee is eligible for licence.	39
35	Chief executive of department is eligible for licence.	39
Division 7	Issue of licences	
36	Chief executive may issue or refuse to issue licence	39
37	Licence—public trustee	40
38	Licence—chief executive of department.	41
39	Licence—conditions	41
Division 8	Restrictions on performing activities under licences	
40	Restriction—corporations.	42
41	Restriction—individuals	43

42	Restriction—conditions	43
Division 9	Renewal and restoration of licences	
Subdivision 1	Renewal	
43	Application for renewal	44
44	Chief executive may renew or refuse to renew licence	45
45	Licence taken to be in force while application for renewal is considered	46
Subdivision 2	Restoration	
46	Application for restoration	46
47	Licence taken to be in force while application for restoration is considered	47
48	Chief executive may restore or refuse to restore licence	47
Division 10	Dealings with licences	
Subdivision 1	Transfer of licence	
49	Transfer of licence prohibited	49
50	Offence to sell, lend or borrow licence	49
Subdivision 2	Substitute licences	
51	Appointment of substitute licensee—principal licensee—individual	50
52	Appointment of substitute licensee—employed licensee in charge of a licensee’s business at a place	52
53	Chief executive may appoint or refuse to appoint substitute licensee	53
54	Substitute licensee	54
55	Limitation on period of substitution	55
Subdivision 3	General	
56	Amendment of licence conditions	55
57	Return of licence for amendment or replacement	57
58	Return of licence for suspension or cancellation	57
59	Surrender of licence	57
60	Licence may be deactivated	58
Division 11	Suspension and cancellation of licences	
61	Immediate suspension	59
62	Immediate cancellation	60
63	Cancellation of motor dealer licence—identified participant	61
Division 12	General provisions about licences	
64	Form of licence	61

Contents

65	Requirement to keep copy of licence available for inspection . . .	62
66	Term of licence	62
67	Replacement licences	63
68	Register of licences	64
Division 13	General provisions about licensees	
69	Licensees to notify chief executive of changes in circumstances.	65
70	Registered office	65
71	Licensee must notify chief executive of change in place of business etc.	66
72	Advertising	66
73	Licensee to obtain statement from seller of vehicle	67
74	Licensee to give statement to buyer of vehicle	67
75	Production of licence	68
Part 3	Motor dealers	
Division 1	Motor dealers' authorisation and responsibilities	
76	What a motor dealer licence authorises	68
77	Responsibility for acts and omissions of motor salespersons . . .	69
Division 2	Carrying on business	
78	Carrying on of business under motor dealer licence	70
79	Licensee to be in charge of motor dealer's business at a place . .	70
80	Motor dealer dealing in motor vehicles.	71
Division 3	Appointment	
Subdivision 1	Requirements	
81	Appointment—sale on consignment.	72
82	Content of appointment	72
83	Form of appointment	73
84	Giving signed appointment to client	74
Subdivision 2	Assignment	
85	Proposal for assignment of appointment	74
Division 4	Particular conduct provisions	
Subdivision 1	Consignment selling	
86	Trade-ins.	75
Subdivision 2	Recovery of reward or expense	
87	Commission may be claimed only for actual amounts	75
88	Restriction on remedy for reward or expense.	76
89	Excess commission etc. to be repaid.	76

Subdivision 3	Interests in motor vehicles	
90	Definition for sdiv 3	77
91	Beneficial interest—options	77
92	Beneficial interest—other than options.	77
93	Return of beneficial interest if in form of commission.	79
Subdivision 4	Prescribed conduct provisions	
94	Prescribed conduct provisions	79
Subdivision 5	Sales of used motor vehicles that are written-off vehicles	
95	Notice to be given about used motor vehicle—written-off vehicle	80
Division 5	Sale of motor vehicles by motor dealer	
96	Obligation to give clear title	81
97	Contract must contain statement of guarantee of clear title	82
Division 6	Cooling-off period	
98	Definitions for div 6	82
99	Meaning of cooling-off period.	83
100	Application of div 6	84
101	Particular vehicles for sale on consignment to be identified as not being subject to cooling-off period	84
102	Notice to be given about used motor vehicle—no prior contract .	85
103	Option to purchase during cooling-off period	86
104	Buyer’s rights if notice not given or materially defective	87
105	Contract must contain cooling-off clause	88
106	Consideration for cooling-off period	89
107	Consideration for option	89
108	Harassment or coercion	90
109	Property does not pass during cooling-off period.	90
110	Buyer may avoid contract during cooling-off period	90
111	Procedure for avoidance	90
112	What happens when contract avoided	91
113	Consideration for used motor vehicle during cooling-off period . .	91
Division 7	Dealing with warranted and unwarranted vehicles	
114	Definition for div 7.	92
115	Statutory warranty for warranted vehicles	92
116	Unwarranted vehicles to be identified when offered for sale	92
Division 8	General	
117	Motor dealer to keep transactions register	93

Contents

118	Contract of sale	94
Division 9	Particular offences	
119	Acting as motor dealer	95
120	Motor dealer must not act for more than 1 party	95
121	Employment of persons in motor dealer business	96
Part 4	Chattel auctioneers	
Division 1	Chattel auctioneers' authorisation	
122	What a chattel auctioneer licence authorises.	96
Division 2	Carrying on business	
123	Carrying on of business under chattel auctioneer licence	97
124	Licensee to be in charge of chattel auctioneer's business at a place	97
Division 3	Appointment	
Subdivision 1	Requirements	
125	Appointment of chattel auctioneer	99
126	Content of appointment	100
127	Form of appointment	101
128	Giving signed appointment to client	101
Subdivision 2	Assignment	
129	Proposal for assignment of appointments	101
Division 4	Particular conduct provisions	
Subdivision 1	Auctions of goods	
130	Buyer's premium.	102
Subdivision 2	Recovery of reward or expense	
131	Commission may be claimed only for actual amounts	103
132	Restriction on remedy for reward or expense.	103
133	Restriction on recovery of reward or expense above amount allowed	104
134	Excess commission etc. to be repaid.	105
Subdivision 3	Interests in goods	
135	Definition for sdiv 3.	106
136	Beneficial interest—options	106
137	Beneficial interest—other than options.	106
138	Return of beneficial interest if in form of commission.	108
139	Non-application of s 137 for particular livestock sales	108

Subdivision 4	Prescribed conduct provisions	
140	Prescribed conduct provisions	108
Subdivision 5	Sales of written-off vehicles	
141	Announcements before auction—written-off vehicle	109
Division 5	Sale of motor vehicles by auction	
142	Obligation to give clear title	110
143	Contract must contain statement of guarantee of clear title	111
Division 6	Dealing with warranted and unwarranted vehicles	
144	Definition for div 6.	111
145	Statutory warranty for warranted vehicles	111
146	Unwarranted vehicles to be identified when offered for sale	111
147	Announcements before auction	112
Division 7	General	
148	Licensee’s disclosures to persons taking part in auction	112
Division 8	Particular offences	
149	Acting as chattel auctioneer	113
150	Chattel auctioneer must not act for more than 1 party	113
Part 5	Registration of motor salespersons	
Division 1	Categories of registration	
151	Categories of registration certificate.	114
Division 2	Motor salespersons’ authorisation	
152	What a registration certificate authorises.	115
Division 3	How to obtain registration	
153	Steps involved in obtaining registration	115
Division 4	Applications for registration	
154	Application for registration	116
155	Particular persons can not make application	116
156	Requirement to give chief executive information or material about application	117
Division 5	Suitability of applicants	
157	Suitability of applicants.	117
158	Chief executive must consider suitability of applicants.	118
159	Investigations about suitability of applicants.	120
160	Notice of change in criminal history	120
161	Costs of criminal history report.	121
162	Use of information obtained under s 159 or s 160	122

Contents

163	Requesting and using information from commissioner—identified participant	122
164	Confidentiality of criminal history	123
Division 6	Eligibility for registration	
165	Eligibility for registration as motor salesperson	123
Division 7	Issue of registration certificate	
166	Chief executive may issue or refuse to issue registration certificate	124
167	Registration certificate—conditions	125
Division 8	Renewal and restoration of registration certificates	
Subdivision 1	Renewal	
168	Application for renewal	126
169	Chief executive may renew or refuse to renew registration certificate	126
170	Registration certificate taken to be in force while application for renewal is considered.	127
Subdivision 2	Restoration	
171	Application for restoration.	127
172	Chief executive may restore or refuse to restore registration certificate	128
173	Registration certificate taken to be in force while application for restoration is considered	129
Division 9	Dealings with registration certificates	
Subdivision 1	Transfer of registration certificate	
174	Transfer of registration certificate prohibited.	129
175	Offence to sell, lend or borrow registration certificate	130
Subdivision 2	General	
176	Amendment of registration certificate conditions	130
177	Return of registration certificate for amendment or replacement	132
178	Return of registration certificate for suspension or cancellation.	132
179	Surrender of registration certificate	132
Division 10	Suspension and cancellation of registration certificates	
180	Immediate suspension	133
181	Immediate cancellation.	134
182	Cancellation—identified participant	134
Division 11	General provisions about employee registration	
183	Form of registration certificate	135

184	Requirement to keep copy of registration certificate available for inspection	135
185	Term of registration certificate	135
186	Replacement certificates	136
187	Register of registration certificates	137
188	Motor salespersons to notify chief executive of changes in circumstances	138
189	Production of registration certificate	138
190	Pretending to be motor salesperson	138
Part 6	Trust accounts	
191	Keeping trust accounts	139
Part 7	Proceedings	
Division 1	QCAT proceedings	
Subdivision 1	Preliminary	
192	Definitions for div 1	140
193	Jurisdiction	140
Subdivision 2	Disciplinary proceedings	
194	Grounds for starting disciplinary proceedings	140
195	Starting disciplinary proceedings	142
Subdivision 3	Review proceedings	
196	Person dissatisfied with chief executive's decision may seek review	143
197	Stay of operation of decisions	143
198	QCAT may extend time	143
Subdivision 4	QCAT's orders	
199	Orders QCAT may make on disciplinary hearing	143
200	Stopping contraventions	145
Subdivision 5	Chief executive's right of appeal	
201	Appeal	146
Division 2	Conduct of proceedings	
202	Confidentiality of criminal intelligence in proceedings	146
203	Application of Judicial Review Act 1991	148
Part 8	Injunctions and undertakings	
Division 1	Injunctions	
204	Grounds for injunction	149
205	Who may apply for injunction	149
206	When injunction may be granted	150

Contents

207	Court’s powers for injunctions	150
208	Terms of injunction	150
209	Undertakings as to costs	151
Division 2	Undertakings	
210	Chief executive may seek undertaking after contravention	151
211	Undertaking about other matter	152
212	Variation and withdrawal of undertakings	152
213	Enforcement of undertakings	153
214	Register of undertakings	153
Part 9	General contraventions and evidentiary matters	
Division 1	General contraventions	
215	Wrongful conversion and false accounts	154
216	False representations about goods	156
217	Chief executive’s power to ask for substantiation of representations	157
218	False representations about mileage	157
219	Tampering with odometers	157
220	Offence to charge fee for providing documents etc.	158
221	False or misleading statements	159
222	False or misleading documents	159
Division 2	Evidentiary matters	
223	Evidence of tampering by a motor dealer or chattel auctioneer	160
224	Continuing false representation—tampered with odometer	160
225	Evidentiary provisions	161
226	Entries in licensee’s documents	162
Division 3	Proceedings	
227	Proceedings for an offence.	162
228	Responsibility for acts or omissions of representatives	164
229	Power of court	164
230	Allegations of false or misleading representations or statements etc.	165
Part 10	General	
231	Public warning statements	166
232	Civil remedies not affected	166
233	Criminal Proceeds Confiscation Act 2002 not limited.	166
234	Delegation—chief executive	166

235	Approved forms	167
236	Regulation-making power.	167
Part 11	Transitional provisions	
237	Transitional provisions for repeal of PAMDA.	168
Part 12	Minor and consequential amendments	
238	Minor and consequential amendments	169
Schedule 1	Statutory warranty provisions	170
Part 1	Preliminary	
1	Definitions for sch 1	170
2	Meaning of defect.	171
3	Meaning of warranted vehicle.	171
4	Meaning of warranty period	172
5	Application of sch 1	173
Part 2	Provisions about statutory warranty	
6	Licensee must give buyer notice about statutory warranty.	173
7	Statutory warranty	174
8	Defects not covered by statutory warranty	174
9	Buyer's obligations under statutory warranty	174
10	Warrantor to record particulars of extension of warranty period.	176
11	Warrantor to advise whether defect covered by statutory warranty	176
12	Warrantor's obligation to repair defects	176
13	Warrantor's failure to repair	177
14	Applications for more than prescribed amount.	179
Schedule 2	Decisions subject to review	180
Schedule 3	Consequential amendments	182
Part 1	Amendments of this Act	
Part 2	Other amendments	
	Criminal Organisation Act 2009	182
	Duties Act 2001	183
	Forestry Act 1959.	183
	Police Powers and Responsibilities Act 2000.	183
	Queensland Civil and Administrative Tribunal Act 2009.	184
	Second-hand Dealers and Pawnbrokers Act 2003.	184
	Transport Operations (Road Use Management) Act 1995.	185
Schedule 4	Dictionary	186

2013

A Bill

for

An Act to provide comprehensively for the regulation of the activities, licensing and conduct of motor dealers and chattel auctioneers and their employees, to protect consumers against particular undesirable practices, and to make minor and consequential amendments of this Act, the *Criminal Organisation Act 2009*, the *Duties Act 2001*, the *Forestry Act 1959*, the *Police Powers and Responsibilities Act 2000*, the *Queensland Civil and Administrative Tribunal Act 2009*, the *Second-hand Dealers and Pawnbrokers Act 2003* and the *Transport Operations (Road Use Management) Act 1995*

[s 1]

The Parliament of Queensland enacts—	1
Part 1 Preliminary	2
Division 1 Introduction	3
1 Short title	4
This Act may be cited as the <i>Motor Dealers and Chattel Auctioneers Act 2013</i> .	5 6
2 Commencement	7
This Act commences on a day to be fixed by proclamation.	8
3 Act binds all persons	9
(1) This Act binds all persons, including the State, and, so far as the legislative power of Parliament permits, the Commonwealth and the other States.	10 11 12
(2) Nothing in this Act makes the State, the Commonwealth or any other State liable to be prosecuted for an offence.	13 14
4 Relationship with Fair Trading Inspectors Act 2013	15
(1) The <i>Fair Trading Inspectors Act 2013</i> (the FTI Act) enacts common provisions for this Act and particular other Acts about fair trading.	16 17 18
(2) Unless this Act otherwise provides in relation to the FTI Act, the powers that an inspector has under that Act are in addition to and do not limit any powers the inspector may have under this Act.	19 20 21 22

Division 2	Exemptions	1
5	Financial institutions and trustee companies	2
(1)	Part 3 does not apply to a financial institution or trustee company.	3 4
(2)	In this section—	5
	<i>trustee company</i> means—	6
(a)	a trustee company under the <i>Trustee Companies Act 1968</i> ; or	7 8
(b)	the public trustee when the public trustee is—	9
(i)	performing the activities that may be performed by a trustee company; or	10 11
(ii)	exercising the powers that may be exercised by a trustee company; or	12 13
(iii)	holding an office that may be held by a trustee company.	14 15
6	Particular auctions	16
	Part 4 does not apply to—	17
(a)	a sale made under a rule, order, or judgment of the Supreme Court or District Court; or	18 19
(b)	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	20 21 22 23
(c)	a sale of an animal lawfully seized and sold under the <i>Animal Care and Protection Act 2001</i> or another law about seizing or impounding animals; or	24 25 26
(d)	a sale of goods distrained for rent or arrears of rent; or	27
(e)	a sale by postal bids of stamps or coins; or	28

[s 7]

- (f) a sale conducted for a charity, a religious denomination, or an organisation formed for a community purpose, within the meaning of the *Collections Act 1966* (a **relevant entity**) if—
 - (i) the person conducting the sale does not receive from the relevant entity a reward for the person's services; and
 - (ii) amounts received from the sale are paid directly to an officer or employee of the relevant entity who is authorised by the relevant entity to receive and deal with the amounts; or
- (g) a sale conducted by or for Magic Millions Sales Pty Limited ACN 078 396 317 as part of the event known as the Gold Coast Horses in Training Sale if the sale is conducted by a person approved by the chief executive before the sale as a suitable person to conduct the sale; or
- (h) a sale of goods directly connected with a sale by auction of a place of residence or land performed by a property agent appointed under the *Property Occupations Act 2013*, part 4; or
- (i) an auction held by an officer under the *Forestry Act 1959* for that Act.

7 Administrators etc.

- (1) This section applies to the following persons (each an **appointee**)—
 - (a) a person appointed under the Corporations Act as an administrator of a corporation that is or was authorised under a licence or former licence to perform an activity;
 - (b) a person appointed under the Corporations Act as an administrator of a deed of company arrangement for a corporation that is or was authorised under a licence or former licence to perform an activity;

-
- (c) a person appointed under the Corporations Act as a liquidator, or controller of property, of a corporation that is or was authorised under a licence or former licence to perform an activity; 1
2
3
4
- (d) a person appointed under the Administration Act as a receiver of an entity that is or was authorised under a licence or former licence to perform an activity; 5
6
7
- (e) a person appointed under the *Bankruptcy Act 1966* (Cwlth) as the trustee in bankruptcy, or the Official Receiver, for an individual who is or was authorised under a licence or former licence to perform an activity. 8
9
10
11
- (2) The appointee is exempt from the provisions mentioned in subsection (3) while performing the activity in relation to a business that is or was authorised to be carried on under— 12
13
14
- (a) for a licence that is in force—the licence; or 15
- (b) for a former licence—the former licence immediately before it stopped being in force. 16
17
- (3) For subsection (2) the provisions are the following— 18
- section 70 19
 - section 71 20
 - section 72 21
 - section 76 22
 - section 79 23
 - section 80 24
 - part 3, division 3 25
 - section 119 26
 - section 122 27
 - section 124 28
 - part 4, division 3 29
 - section 148 30
 - section 149. 31

[s 8]

- (4) In this section— 1
former licence means— 2
(a) a licence that was previously in force; or 3
(b) a motor dealer’s licence or former auctioneers licence 4
under PAMDA. 5
person appointed as the trustee in bankruptcy, for an 6
individual, includes the Official Trustee in Bankruptcy under 7
Bankruptcy Act 1966 (Cwlth) if the Official Trustee is the 8
trustee in bankruptcy for the individual. 9

Division 3 Object of Act 10

8 Main object 11

- (1) The main object of this Act is to provide a system for 12
licensing and regulating persons as motor dealers and chattel 13
auctioneers and for registering and regulating persons as 14
motor salespersons that achieves an appropriate balance 15
between— 16
(a) the need to regulate for the protection of consumers; and 17
(b) the need to promote freedom of enterprise in the market 18
place. 19
(2) The object is to be achieved mainly by— 20
(a) ensuring— 21
(i) only suitable persons with appropriate 22
qualifications are licensed or registered; and 23
(ii) persons who carry on business or are in charge of a 24
licensee’s business at a place under the authority of 25
a motor dealer licence or chattel auctioneer licence 26
maintain close personal supervision of the way the 27
business is carried on; and 28
(b) providing— 29

(i)	protection for consumers in their dealings with licensees and their employees; and	1 2
(ii)	a legislative framework within which persons performing activities for licensees may lawfully operate; and	3 4 5
(c)	regulating fees and commissions that can be charged for particular transactions; and	6 7
(d)	providing increased flexibility in enforcement measures through injunctions and undertakings; and	8 9
(e)	promoting administrative efficiency by providing that—	10
(i)	responsibility for licensing rests with the chief executive; and	11 12
(ii)	responsibility for reviewing particular decisions of the chief executive rests with QCAT; and	13 14
(iii)	responsibility for disciplinary matters rests with QCAT.	15 16
Division 4	Interpretation	17
9	Definitions	18
	The dictionary in schedule 4 defines particular words used in this Act.	19 20
10	Meaning of <i>beneficial interest</i>	21
(1)	For this Act, other than section 19(2)(a) or (4)(b)(i), a licensee is taken to have a <i>beneficial interest</i> in property, for example, if—	22 23 24
(a)	the purchase of the property is made for the licensee or an associate of the licensee; or	25 26
(b)	an option to purchase the property is held by the licensee or an associate of the licensee; or	27 28

[s 10]

- (c) the purchase of the property is made for a corporation (having not more than 100 members) of which the licensee or an associate of the licensee is a member; or
 - (d) an option to purchase the property is held by a corporation (having not more than 100 members) of which the licensee or an associate of the licensee is a member; or
 - (e) the purchase of the property is made for a corporation of which the licensee or an associate of the licensee is an executive officer; or
 - (f) an option to purchase the property is held by a corporation of which the licensee or an associate of the licensee is an executive officer; or
 - (g) for a licensee that is a corporation—
 - (i) the purchase of the property is made for an executive officer of the licensee or an associate of the executive officer; or
 - (ii) an option to purchase the property is held by an executive officer of the licensee or an associate of the executive officer; or
 - (h) the purchase of the property is made for a member of a firm or partnership of which the licensee or an associate of the licensee is also a member; or
 - (i) the purchase of the property is made for a person carrying on a business for profit or gain and the licensee or an associate of the licensee has, directly or indirectly, a right to participate in the income or profits of the person's business or the purchase of the property.
- (2) For this Act, other than section 19(2)(a) or (4)(b)(i), a motor salesperson is taken to have a *beneficial interest* in property, for example, if—
- (a) the purchase of the property is made for the motor salesperson or an associate of the salesperson; or
 - (b) the motor salesperson or an associate of the salesperson has an option to purchase the property; or

-
- (c) the purchase of the property is made for a corporation (having not more than 100 members) of which the motor salesperson or an associate of the salesperson is a member; or
 - (d) an option to purchase the property is held by a corporation (having not more than 100 members) of which the motor salesperson or an associate of the salesperson is a member; or
 - (e) the purchase of the property is made for a corporation of which the motor salesperson or an associate of the salesperson is an executive officer; or
 - (f) an option to purchase the property is held by a corporation of which the motor salesperson or an associate of the salesperson is an executive officer; or
 - (g) the purchase of the property is made for an executive officer of a corporation of which the motor salesperson or an associate of the salesperson is an executive officer; or
 - (h) an option to purchase the property is held by an executive officer of a corporation of which the motor salesperson or an associate of the salesperson is an executive officer; or
 - (i) the purchase of the property is made for a member of a firm or partnership of which the motor salesperson or an associate of the salesperson is also a member; or
 - (j) the purchase of the property is made for a person carrying on a business for profit or gain and the motor salesperson or an associate of the salesperson has, directly or indirectly, a right to participate in the income or profits of the person's business or the purchase of the property.

11 Meaning of *in charge*

- (1) A person is *in charge* of a licensee's business at a place where the licensee carries on business only if the person personally

[s 12]

supervises, manages or controls the conduct of the licensee's
business at the place. 1
2

(2) In this section— 3

licensee's business means the licensee's business carried on
under the authority of the licensee's licence. 4
5

12 Meaning of *motor vehicle* 6

(1) A *motor vehicle* means— 7

(a) a vehicle that moves on wheels and is propelled by a
motor that forms part of the vehicle, whether or not the
vehicle is capable of being operated or used in a normal
way; or 8
9
10
11

(b) a caravan. 12

(2) However, a *motor vehicle* does not include any of the
following— 13
14

(a) a hovercraft; 15

(b) a motorised golf buggy; 16

(c) a motorised scooter; 17

(d) a motorised wheelchair; 18

(e) a trailer, other than a caravan; 19

(f) a tractor or farm machinery; 20

(g) a vehicle designed for use exclusively in the mining
industry; 21
22

(h) a vehicle designed for use exclusively on a railway or
tramway. 23
24

(3) In this section— 25

motorised golf buggy means a motorised golf buggy under the
Transport Operations (Road Use Management) Act 1995. 26
27

motorised scooter see the *Transport Operations (Road Use
Management) Act 1995*, schedule 4. 28
29

motorised wheelchair means a motorised wheelchair under the *Transport Operations (Road Use Management) Act 1995*. 1
2

13 Meaning of *sale by auction* 3

(1) Generally, a *sale by auction* of a used motor vehicle or other goods under this Act means the sale of the vehicle or goods in any way commonly known and understood to be by auction. 4
5
6

(2) However, the sale of a used motor vehicle or other goods by auction is not a sale by auction under this Act if— 7
8

(a) the person selling the vehicle or goods by auction (the *seller*) owns the vehicle or goods and is not selling the vehicle or goods for someone else; and 9
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11

(b) the auction is conducted, whether by the seller or another entity, wholly by 1 or more electronic communications. 12
13
14

(3) In this section— 15

conducting, an auction, includes facilitating the conduct of the auction. 16
17

Example of facilitating the conduct of an auction— 18

operating an online marketplace auction facility (for example, the facility known as eBay) that is available for a person to use to sell a used motor vehicle or other goods by auction 19
20
21

electronic communication see the *Electronic Transactions (Queensland) Act 2001*, schedule 2. 22
23

[s 14]

Part 2	Licensing	1
Division 1	Categories of licence	2
14	Categories of licence	3
	The chief executive may issue the following categories of licence under this Act—	4 5
	(a) a motor dealer licence;	6
	(b) a chattel auctioneer licence.	7
Division 2	Limited motor dealer licence	8
15	Limited motor dealer licence	9
(1)	The chief executive may issue a motor dealer licence (a <i>limited motor dealer licence</i>) prescribed under a regulation, that limits the activities that may otherwise be performed under a motor dealer licence.	10 11 12 13
(2)	To be eligible for a limited motor dealer licence, an applicant for the licence must have the educational qualifications approved by the chief executive for obtaining the licence.	14 15 16
	<i>Editor's note—</i>	17
	The qualifications are stated on the department's website.	18

Division 3	How to obtain a licence	1
16	Steps involved in obtaining a licence	2
(1)	A person who wishes to obtain a licence must be a suitable person to hold a licence under division 5.	3 4
(2)	The person must apply for the licence by—	5
(a)	giving the chief executive an application showing, among other things, the person is eligible for the licence; and	6 7 8
(b)	paying—	9
(i)	the fees prescribed under a regulation; and	10
(ii)	if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid; and	11 12 13 14
(c)	giving the chief executive the other information required under section 18.	15 16
(3)	In deciding the application, the chief executive must have regard, among other things, to—	17 18
(a)	the person’s suitability to hold a licence under this Act; and	19 20
(b)	the person’s eligibility for the licence.	21
Division 4	Applications for licence	22
17	Application for licence	23
(1)	An applicant for a licence must—	24
(a)	apply to the chief executive in the approved form; and	25
(b)	state the category of licence being applied for; and	26
(c)	state the term of the licence being applied for; and	27

[s 18]

- (d) establish the applicant’s eligibility for the category of licence being applied for; and 1
2
 - (e) state the names and addresses of the applicant’s business associates; and 3
4
 - (f) provide any information the chief executive reasonably requires to decide whether the applicant is a suitable person to hold a licence. 5
6
7
- (2) The application must be accompanied by— 8
- (a) the application fee prescribed under a regulation; and 9
 - (b) the licence issue fee prescribed under a regulation; and 10
 - (c) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid. 11
12
13
- 18 Applicant must state business address 14**
- (1) The applicant must also state in the applicant’s application— 15
- (a) if the applicant intends carrying on business under the licence immediately after the issue of the licence—the place or places in Queensland where the applicant proposes to carry on business under the licence; or 16
17
18
19
 - (b) if the applicant does not intend carrying on business under the licence immediately after the issue of the licence— 20
21
22
 - (i) the capacity in which the applicant intends performing activities under the licence and the address where the activities are to be performed (*business address*); and 23
24
25
26
 - (ii) if the applicant intends to be a person in charge of a licensee’s business at a place of business—the name of the applicant’s employer and the address of the place of business where the applicant is to be in charge (also a *business address*). 27
28
29
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<i>Examples of capacity in which activities may be performed—</i>	1
• person in charge of a corporation’s business	2
• licensed employee of a licensee	3
<i>Example of business address of an employed licensee—</i>	4
the address of the person’s employer’s place of business where	5
the person generally reports for work	6
(2) If the applicant intends to carry on business under the licence	7
at more than 1 place, the applicant must state in the	8
application the place the applicant intends to be the	9
applicant’s principal place of business.	10
(3) A place of business or an address under this section must be a	11
place where a document can be served personally.	12
(4) A place of business or an address must not be a post office	13
box.	14
19 Particular persons can not make application	15
(1) A person who is a disqualified person can not make an	16
application for a licence during the period for which the	17
person is disqualified.	18
(2) A corporation that was the holder of a licence that was	19
cancelled can not make an application for a licence unless the	20
corporation satisfies the chief executive that, because of a	21
genuine sale—	22
(a) no person who was a shareholder of, or held a beneficial	23
interest in, the corporation when the licence was	24
cancelled is a shareholder of, or holds a beneficial	25
interest in, the applicant corporation; and	26
(b) no person who was in a position to control or influence	27
the affairs of the corporation when the licence was	28
cancelled is in a position to control or influence the	29
affairs of the applicant corporation.	30
(3) If a person applies for a licence and the chief executive	31
decides to refuse to issue the licence, the person can not make	32
another application for a licence of that type—	33

[s 20]

- (a) for 3 months after the day the chief executive gives the person the information notice about the decision; or
 - (b) if the person applies to QCAT to review the decision and the decision is confirmed—for 3 months after the day the decision is confirmed.
- (4) Subsection (3) does not apply if—
- (a) the person is a corporation; and
 - (b) the person satisfies the chief executive that, because of a genuine sale—
 - (i) no person who was a shareholder of, or held a beneficial interest in, the corporation when the refused application was made is a shareholder of, or holds a beneficial interest in, the corporation; and
 - (ii) no person who was in a position to control or influence the affairs of the corporation when the refused application was made is in a position to control or influence the affairs of the corporation.
- (5) In this section—
- disqualified person* means a person who, as a consequence of an order made by QCAT under section 199 or a court under section 229, is disqualified from holding a licence.

20 Requirement to give information or material about application or request

- (1) This section applies to any of the following—
- (a) an applicant for a licence;
 - (b) an applicant for renewal of a licence;
 - (c) an applicant for restoration of a licence;
 - (d) an applicant for the appointment or extension of the appointment of a nominated person mentioned in section 51(3) or 52(4) as the applicant’s substitute licensee;

-
- (e) a licensee who has asked the chief executive to
reactivate the licensee's licence. 1 2
- (2) The chief executive may, by written notice given to the
applicant or licensee, require the applicant or licensee to give
the chief executive within a stated reasonable period
information or material the chief executive reasonably
considers is needed to consider the application or request. 3 4 5 6 7
- Example of information or material—* 8
- information or material the chief executive reasonably considers is
needed to establish the applicant's or licensee's suitability for the
licence 9 10 11
- (3) The applicant or licensee is taken to have withdrawn the
application or request if, within the stated reasonable period,
the applicant or licensee fails to comply with the chief
executive's requirement. 12 13 14 15

Division 5 Suitability of applicants and licensees 16 17

21 Suitability of applicants and licensees—individuals 18

- (1) An individual is not a suitable person to hold a licence if the
individual— 19 20
- (a) is an insolvent under administration; or 21
- (b) has been convicted, in Queensland or elsewhere, within
the preceding 5 years of a serious offence; or 22 23
- (c) is currently disqualified from holding a licence or
registration certificate; or 24 25
- (d) is a person the chief executive decides under section 23
is not a suitable person to hold a licence; or 26 27
- (e) for holding a motor dealer licence—is an identified
participant in a criminal organisation. 28 29
- (2) An individual who is not a suitable person can not hold a
licence. 30 31

[s 22]

22	Suitability of applicants and licensees—corporations	1
(1)	A corporation is not a suitable person to hold a licence if the corporation—	2 3
(a)	has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or	4 5
(b)	is currently disqualified from holding a licence; or	6
(c)	is a person the chief executive decides under section 23 is not a suitable person to hold a licence.	7 8
(2)	A corporation is not a suitable person to hold a licence if any of the following applies to an executive officer of the corporation—	9 10 11
(a)	the executive officer is an insolvent under administration;	12 13
(b)	the executive officer has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence;	14 15 16
(c)	the executive officer is currently disqualified from holding a licence or registration certificate;	17 18
(d)	the chief executive decides under section 23 the executive officer is not a suitable person to hold a licence;	19 20 21
(e)	for the holding of a motor dealer licence by the corporation—the executive officer is an identified participant in a criminal organisation.	22 23 24
(3)	A corporation that is not a suitable person can not hold a licence.	25 26
23	Chief executive must consider suitability of applicants and licensees	27 28
(1)	The chief executive must, when deciding whether a person is a suitable person to hold a licence, consider all of the following things—	29 30 31
(a)	the character of the person;	32

-
- (b) the character of the person’s business associates; 1
- (c) whether the person held a licence or registration 2
certificate under a relevant Act that was suspended or 3
cancelled under the relevant Act; 4
- (d) whether an amount has been paid from the fund because 5
the person did, or omitted to do, something that gave 6
rise to the claim against the fund; 7
- (e) whether the person has been disqualified under a 8
relevant Act from being the holder of a licence or 9
registration certificate within the meaning of the 10
relevant Act; 11
- (f) whether the person has been disqualified from managing 12
corporations under the Corporations Act; 13
- (g) whether, within the preceding 5 years, QCAT, the 14
former tribunal or the District Court has made an order 15
under this Act or PAMDA adverse to the person; 16
- (h) for an individual— 17
- (i) the individual’s criminal history; and 18
- (ii) whether the individual has been an insolvent under 19
administration; and 20
- (iii) whether the individual has been convicted of an 21
offence against a relevant Act or the 22
Administration Act; and 23
- (iv) for holding a motor dealer licence—whether the 24
individual is an identified participant in a criminal 25
organisation; and 26
- (v) whether the individual is capable of satisfactorily 27
performing the activities of a licensee; and 28
- (vi) whether the individual’s name appears in the 29
register of persons disqualified from managing 30
corporations under the Corporations Act; 31
- Note—* 32
- See the Corporations Act, section 1274AA (Register of 33
disqualified company directors and other officers). 34
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[s 24]

(i)	for a corporation—	1
(i)	whether the corporation has been placed in receivership or liquidation; and	2 3
(ii)	whether an executive officer of the corporation is an identified participant in a criminal organisation; and	4 5 6
(iii)	whether an executive officer of the corporation has been an insolvent under administration; and	7 8
(iv)	whether an executive officer of the corporation has been convicted of an offence against a relevant Act or the Administration Act; and	9 10 11
(v)	whether each executive officer of the corporation is a suitable person to hold a licence;	12 13
(j)	another thing the chief executive may consider under this Act.	14 15
(2)	If the chief executive decides a person is not a suitable person to hold a licence, the chief executive must give the person an information notice about the decision within 14 days after making the decision.	16 17 18 19
(3)	The <i>Acts Interpretation Act 1954</i> , section 27B, does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner to the chief executive under section 30(3).	20 21 22 23
(4)	In this section—	24
	<i>fund</i> includes the claim funds under PAMDA and the repealed <i>Auctioneers and Agents Act 1971</i> .	25 26
	<i>relevant Act</i> means this Act, an Agents Act, PAMDA or a corresponding law.	27 28
24	Public trustee is a suitable person	29
	The corporation sole called The Public Trustee of Queensland is taken to be a suitable person to hold a licence.	30 31

25	Chief executive of department is a suitable person	1
	The chief executive of a department is taken to be a suitable person to hold a licence.	2 3
26	Investigations about suitability of applicants, nominated persons and licensees	4 5
(1)	The chief executive may make investigations about the following persons to help the chief executive decide whether an applicant or nominated person mentioned in section 20(1) or licensee is a suitable person to hold a licence—	6 7 8 9
(a)	the applicant, nominated person or licensee;	10
(b)	if the applicant, nominated person or licensee intends carrying on, or carries on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant, nominated person or licensee intends carrying on, or carries on, business in partnership or in conjunction;	11 12 13 14 15 16
(c)	if the applicant or licensee is a corporation—each executive officer of the corporation;	17 18
(d)	a business associate of the applicant, nominated person or licensee.	19 20
(2)	Without limiting subsection (1), the chief executive may ask the commissioner for a criminal history report about any of the persons.	21 22 23
(3)	The commissioner must give the report to the chief executive.	24
(4)	However, the report is required to contain only criminal history in the commissioner’s possession or to which the commissioner has access.	25 26 27
(5)	If the person’s criminal history includes a conviction recorded against the person, the report must be written.	28 29

[s 27]

- 27 Notice of change in criminal history** 1
- (1) This section applies if the commissioner reasonably suspects the criminal history of either of the following persons has changed— 2
3
4
- (a) a person who is the holder of a licence; 5
- (b) a person who is a nominated person mentioned in section 51(3) or 52(4) and appointed as a substitute licensee. 6
7
8
- (2) The commissioner may notify the chief executive that the person's criminal history has changed. 9
10
- (3) The notice must state the following— 11
- (a) the person's name and any other name the commissioner believes the person may use or may have used; 12
13
- (b) the person's date and place of birth; 14
- (c) a brief description of the nature of the offence giving rise to the conviction or charge to which the change relates. 15
16
17
- (4) The chief executive may confirm the commissioner's suspicions under subsection (1). 18
19
- (5) For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history. 20
21
22
- (6) In this section— 23
- criminal history*, in relation to a person, includes a charge of an offence laid against the person that has not been dismissed. 24
25
- offence* includes an alleged offence. 26
- 28 Costs of criminal history report** 27
- (1) The chief executive may require an applicant mentioned in section 20(1) or a licensee to pay the reasonable, but no more than actual, costs of obtaining a criminal history report under section 26 about— 28
29
30
31

-
- (a) the applicant or licensee; or 1
- (b) a nominated person mentioned in section 51(3) or 52(4) 2
as the applicant’s substitute licensee; or 3
- (c) a person to whom section 26(1)(b), (c) or (d) applies for 4
deciding whether the applicant, licensee or nominated 5
person is a suitable person to hold a licence. 6
- (2) The requirement is a *criminal history costs requirement*. 7
- (3) The chief executive may notify the applicant or licensee of the 8
requirement to pay a criminal history costs requirement— 9
- (a) in an approved form; or 10
- (b) on the department’s website; or 11
- (c) in a written notice given by the chief executive to the 12
applicant or licensee. 13
- (4) If the criminal history costs requirement is made in a written 14
notice given by the chief executive to the applicant or 15
licensee, the notice must include a requirement for the costs to 16
be paid within a stated reasonable period. 17
- (5) The applicant or licensee is taken to have withdrawn the 18
application for which the criminal history report was 19
requested if the applicant or licensee fails to comply with the 20
criminal history costs requirement. 21
- (6) The chief executive must refund to an applicant or licensee an 22
amount paid under the requirement if— 23
- (a) the chief executive refuses the application without 24
asking for the report; or 25
- (b) the applicant or licensee withdraws the application 26
before the chief executive asks for the report. 27
- (7) In this section— 28
applicant includes proposed applicant. 29
- 29 Use of information obtained under s 26 or s 27 30**
- (1) This section applies to the chief executive in considering— 31
-

[s 30]

- (a) information obtained under section 26 or 27 about an applicant or nominated person mentioned in section 20(1) or a licensee (each a *relevant person*); or
- (b) information obtained under section 26 about an associate of a relevant person.
- (2) Information about a conviction of a relevant person or an associate of a relevant person may be used only for making a decision as to whether the relevant person is, or continues to be, a suitable person to hold a licence.
- (3) Information about a charge against a relevant person 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.
- (4) In this section—
associate, of a relevant person, means a person to whom section 26(1)(b), (c) or (d) applies for deciding whether the relevant person is a suitable person to hold a licence.
- 30 Requesting and using information from commissioner—identified participant**
- (1) The section applies to the chief executive for deciding whether an applicant or nominated person mentioned in section 20(1) or a motor dealer is, or continues to be, a suitable person to hold a motor dealer licence.
- (2) The chief executive must ask the commissioner whether the following person is an identified participant in a criminal organisation—
- (a) the applicant, nominated person or motor dealer;
- (b) if the applicant or motor dealer is a corporation—an executive officer of the corporation.
- (3) The commissioner must comply with the chief executive’s request.
- (4) The chief executive may use the advice given by the commissioner only for deciding whether the applicant,

nominated person or motor dealer is, or continues to be, a
suitable person to hold a motor dealer licence. 1
2

- 31 Confidentiality** 3
- (1) A public service employee performing functions under this
Act must not, directly or indirectly, disclose to anyone else
any of the following (the *relevant information*)— 4
5
6
- (a) a criminal history report or information contained in the
report; 7
8
- (b) any of the contents of a notice given under section 27(2). 9
- Maximum penalty—100 penalty units. 10
- (2) However, the person does not contravene subsection (1) if— 11
- (a) disclosure of the relevant information to someone else is
authorised by the chief executive to the extent necessary
to perform a function under or relating to this Act; or 12
13
14
- (b) the disclosure is otherwise required or permitted by law. 15
- (3) The chief executive must destroy the following as soon as
practicable after considering the person’s suitability to hold a
licence— 16
17
18
- (a) a criminal history report about the person; 19
- (b) a notice given under section 27(2) about the person. 20

Division 6 Eligibility for licence 21

Subdivision 1 Motor dealer licence 22

- 32 Eligibility for motor dealer licence** 23
- (1) An individual is eligible to obtain a motor dealer licence only
if the individual— 24
25
- (a) is at least 18 years; and 26

[s 33]

- (b) has the educational or other qualifications approved by the chief executive for a motor dealer licence. 1
2
- Editor's note—* 3
- The qualifications are stated on the department's website. 4
- (2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual— 5
6
7
- (a) has comparable qualifications to the qualifications mentioned in subsection (1)(b); or 8
9
- (b) within 2 years before the day the individual's application for a motor dealer licence is received by the chief executive— 10
11
12
- (i) has been licensed as a motor dealer; or 13
- (ii) has been the holder of a motor dealer's licence granted under PAMDA. 14
15
- (3) A corporation is eligible to obtain a motor dealer licence only if a person in charge of the corporation's business is a motor dealer. 16
17
18

Subdivision 2 Chattel auctioneer licence 19

33 Eligibility for chattel auctioneer licence 20

- (1) An individual is eligible to obtain a chattel auctioneer licence only if the individual— 21
22
- (a) is at least 18 years; and 23
- (b) has the educational or other qualifications for a chattel auctioneer licence approved by the chief executive. 24
25
- Editor's note—* 26
- The qualifications are stated on the department's website. 27
- (2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual— 28
29
30

-
- (a) has a qualification comparable to the qualification mentioned in subsection (1)(b); or
- (b) within 2 years before the day the individual's application for a chattel auctioneer licence is received by the chief executive—
- (i) has been licensed as a chattel auctioneer; or
- (ii) has been the holder of an auctioneer's licence granted under PAMDA.
- (3) A corporation is eligible to obtain a chattel auctioneer licence only if a person in charge of the corporation's business is a chattel auctioneer.

Subdivision 3 Chief executives and corporation sole

34 Public trustee is eligible for licence

The corporation sole called The Public Trustee of Queensland is taken to be eligible for a licence.

35 Chief executive of department is eligible for licence

The chief executive of a department is taken to be eligible for a licence.

Division 7 Issue of licences

36 Chief executive may issue or refuse to issue licence

- (1) The chief executive may decide to issue or refuse to issue a licence to an applicant.
- (2) The chief executive may decide to issue a licence to an applicant only if the chief executive is satisfied that—
- (a) the applicant is a suitable person to hold a licence and—

[s 37]

- (i) if the applicant intends carrying on business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant intends carrying on business in conjunction is a suitable person to hold a licence; and
 - (ii) if the applicant is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
 - (b) the applicant is eligible for a licence of the category of licence being applied for; and
 - (c) the application complies with sections 17 and 18.
 - (3) If the chief executive decides to refuse to issue the licence, the chief executive must give the applicant an information notice about the decision within 14 days after making the decision.
 - (4) The *Acts Interpretation Act 1954*, section 27B, does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner to the chief executive under section 30(3).
- 37 Licence—public trustee**
- (1) The chief executive may issue a licence to the public trustee in the public trustee’s capacity as a corporation sole in the name ‘The Public Trustee of Queensland’.
 - (2) A licence issued to the public trustee authorises an officer or employee of the public trustee to perform any activity authorised by the public trustee that the public trustee may perform under the licence.
 - (3) To remove any doubt, it is declared that an officer or employee performing an activity authorised by the public trustee is not required to be licensed or registered under this Act to perform the activity.

-
- 38 Licence—chief executive of department** 1
- (1) The chief executive may issue a licence to the chief executive of a department in the name ‘The Chief Executive of the (name of department)’. 2
3
4
- (2) The licence is taken to be issued to the chief executive for the time being of the department. 5
6
- (3) The chief executive of a department, as licensee, is taken to represent the State. 7
8
- (4) A licence issued to the chief executive of a department authorises an officer or employee of the department to perform any activity authorised by the chief executive that the chief executive may perform under the licence. 9
10
11
12
- (5) To remove any doubt, it is declared that an officer or employee performing an activity authorised by the chief executive is not required to be licensed or registered under this Act to perform the activity. 13
14
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16
- 39 Licence—conditions** 17
- (1) The chief executive may decide to issue a licence on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence. 18
19
20
21
- (2) Without limiting subsection (1), a condition may— 22
- (a) limit or prohibit the performance of an activity authorised under this Act or the Administration Act; or 23
24
- (b) require a licensee to hold insurance of a kind and in an amount prescribed under a regulation. 25
26
- (3) If the chief executive decides to issue a licence on condition, the chief executive must give the applicant an information notice about the decision within 14 days after making the decision. 27
28
29
30

[s 40]

Division 8	Restrictions on performing activities under licences	1 2
40	Restriction—corporations	3
(1)	A corporation that holds a licence may perform an activity under its licence at a place only if the activity may be performed by—	4 5 6
(a)	a licensed person who is in charge of the corporation’s business at the place; or	7 8
(b)	a liquidator or controller appointed under the Corporations Act of property of the corporation; or	9 10
(c)	an administrator of the corporation appointed under the Corporations Act; or	11 12
(d)	an administrator of a deed of company arrangement for the corporation appointed under the Corporations Act; or	13 14 15
(e)	a receiver appointed under the Administration Act for property of the corporation.	16 17
(2)	However, subsection (1) does not prevent a corporation that holds a motor dealer licence selling a used motor vehicle by auction if the auction is conducted by a chattel auctioneer who is an employed licensee of the corporation.	18 19 20 21
(3)	A corporation that is a former licensee may perform an activity authorised under the former licence if the activity is performed by a person mentioned in subsection (1)(b), (c), (d) or (e).	22 23 24 25
(4)	If a corporation that holds a licence or is a former licensee 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.	26 27 28 29
(5)	In this section—	30

former licensee means—

- (a) a licensee under a licence that was previously in force;
or
- (b) a licensee under a motor dealer’s licence under
PAMDA.

41 Restriction—individuals

- (1) An individual who is an employed licensee may perform an activity authorised under the individual’s licence only if the activity may also be performed by the individual’s employer under the employer’s licence.

Example—

E is a licensed employee of P, a licensed motor dealer. E’s licence is not subject to a condition. However, P’s licence is subject to a condition that P deal only in motorcycles. Because of the condition, E is only authorised to deal in motorcycles under E’s licence during E’s employment with P and while P is subject to the condition.

- (2) However, subsection (1) does not prevent an individual who holds a chattel auctioneer licence selling goods by auction for the individual’s licensed employer.
- (3) If the employed licensee performs an activity the employed licensee is not authorised to perform because of subsection (1), the employed licensee is taken to be a person who acts as a licensee without a licence for the performance of the activity.

42 Restriction—conditions

- (1) This section applies to a licensee who performs an activity under the licensee’s licence that the licensee is not authorised to perform because of a condition on the licensee’s licence.
- (2) The licensee is taken to be a person who acts as a licensee without a licence for the performance of the activity.

Note—

For some of the consequences of a licensee performing an activity that the licensee is not authorised to perform because of a condition on the

[s 43]

licensee's licence, see sections 88, 119, 132 and 149.

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Division 9 Renewal and restoration of licences

5

Subdivision 1 Renewal

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43 Application for renewal

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(1) A licensee may only apply for renewal of the licensee's licence before the licence expires.

8

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(2) The application must—

10

(a) be made to the chief executive in the approved form; and

11

(b) state the term of the licence being applied for; and

12

(c) state the names and addresses of the licensee's business associates; and

13

14

(d) be accompanied by—

15

(i) the application fee prescribed under a regulation; and

16

17

(ii) the licence renewal fee prescribed under a regulation; and

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(iii) if the licensee is required as a condition of the licensee's licence to hold insurance, proof of the currency of the insurance; and

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(iv) if, before or when the application is made, a criminal history costs requirement is made of the licensee—the amount of the costs required to be paid.

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(3) The application must also be accompanied by—

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(a) an audit report for all trust accounts kept by the licensee during the relevant audit period; or

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- (b) a statutory declaration by the licensee that the licensee did not operate a trust account during the relevant audit period. 1
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- (4) In this section— 4
relevant audit period, for a licensee’s licence, means the audit period ending immediately before the licence’s expiry date. 5
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- 44 Chief executive may renew or refuse to renew licence** 7
- (1) The chief executive must consider the renewal application and decide to renew or refuse to renew the licence. 8
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- (2) The chief executive may decide to renew the licence only if the chief executive is satisfied— 10
11
- (a) the licensee is a suitable person to hold a licence and— 12
- (i) if the licensee carries on business in partnership or in conjunction with others—each member of the partnership or each person with whom the licensee carries on business in conjunction is a suitable person to hold a licence; and 13
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- (ii) if the licensee is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and 18
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- (b) the application is made under section 43; and 21
- (c) the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence. 22
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- (3) If the chief executive decides to refuse to renew the licence, the chief executive must give the applicant an information notice about the decision within 14 days after making the decision. 25
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- (4) The *Acts Interpretation Act 1954*, section 27B, does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner to the chief executive under section 30(3). 29
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[s 45]

45	Licence taken to be in force while application for renewal is considered	1 2
	If an application is made under section 43, the licensee's licence is taken to continue in force from the day that it would, apart from this section, have expired until the licensee's application for renewal is—	3 4 5 6
	(a) decided under section 44; or	7
	(b) withdrawn by the licensee; or	8
	(c) taken to have been withdrawn under section 20(3).	9
Subdivision 2	Restoration	10
46	Application for restoration	11
	(1) If a person's licence expires, the person may apply for restoration of the licence.	12 13
	(2) The application must—	14
	(a) be made to the chief executive in the approved form; and	15
	(b) be made within 3 months after the expiry; and	16
	(c) state the term of the licence being applied for; and	17
	(d) state the names and addresses of the person's business associates; and	18 19
	(e) be accompanied by—	20
	(i) the application fee prescribed under a regulation; and	21 22
	(ii) the licence renewal fee prescribed under a regulation; and	23 24
	(iii) the licence restoration fee prescribed under a regulation; and	25 26
	(iv) if the person was required as a condition of the person's licence to hold insurance—proof of the currency of the insurance; and	27 28 29

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- (v) if, before or when the application is made, a criminal history costs requirement is made of the person—the amount of the costs required to be paid.
- (3) The application must also be accompanied by—
- (a) an audit report about all trust accounts maintained by the person during the relevant audit period; or
- (b) a statutory declaration by the person that the person did not operate a trust account during the relevant audit period.
- (4) In this section—
- relevant audit period*, for a person’s licence, means the audit period ending immediately before the licence expired.
- 47 Licence taken to be in force while application for restoration is considered**
- If an application is made under section 46, the person’s licence is taken to have continued in force from the day that it would, apart from this section, have expired until the application is—
- (a) decided under section 48; or
- (b) withdrawn by the person; or
- (c) taken to have been withdrawn under section 20(3).
- 48 Chief executive may restore or refuse to restore licence**
- (1) The chief executive must consider the application for restoration and may decide to restore or refuse to restore the licence.
- (2) The chief executive may decide to restore the licence only if the chief executive is satisfied—
- (a) the person is a suitable person to hold a licence and—

[s 48]

- (i) if the person carries on, or intends to carry on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the person carries on, or intends to carry on, business in conjunction is a suitable person to hold a licence; and
 - (ii) if the person is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
 - (b) the application is made under section 46; and
 - (c) the person meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.
- (3) If the chief executive decides to refuse to restore the licence, the chief executive must give the person an information notice about the decision within 14 days after the making the decision.
- (4) The *Acts Interpretation Act 1954*, section 27B, does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner to the chief executive under section 30(3).
- (5) If the chief executive decides to restore the licence—
- (a) the licence is taken to have been renewed on the day it would, apart from section 47, have expired (the *initial expiry date*); and
 - (b) to remove any doubt, it is declared that a thing done during the period starting on the initial expiry date and ending on the day the decision is made under this section is taken to have been as validly done as it would have been if the licence had been renewed immediately before the initial expiry date.

Division 10	Dealings with licences	1
Subdivision 1	Transfer of licence	2
49	Transfer of licence prohibited	3
	A licence may not be transferred.	4
50	Offence to sell, lend or borrow licence	5
(1)	A licensee must not—	6
(a)	sell, lend or hire out the licensee’s licence to someone else; or	7 8
(b)	notify or advertise that a licence is available for sale, loan or hire to someone else, whether licensed or not; or	9 10
(c)	permit or allow someone else to hold out that the person is the holder of the licensee’s licence.	11 12
	Maximum penalty—200 penalty units or 2 years imprisonment.	13 14
(2)	A person must not buy, borrow or hire a licensee’s licence.	15
	Maximum penalty—200 penalty units or 2 years imprisonment.	16 17
(3)	If a person who is not the holder of an appropriate licence or the licensee’s substitute has the effective or apparent management or control of a licensee’s business, the licensee is taken to have lent, and the person is taken to have borrowed, the licensee’s licence.	18 19 20 21 22

[s 51]

Subdivision 2	Substitute licences	1
51	Appointment of substitute licensee—principal licensee—individual	2 3
(1)	A principal licensee may appoint an adult as the licensee’s substitute licensee for a period of not more than 30 days only if—	4 5 6
(a)	the licensee will be absent from the licensee’s registered office for the period; and	7 8
(b)	the adult consents to the appointment; and	9
(c)	if the licensee is required as a condition of the licensee’s licence to hold insurance, the adult is covered by the insurance or holds insurance that complies with the requirements of the condition.	10 11 12 13
(2)	The principal licensee must ensure—	14
(a)	an appointment under subsection (1) and the substitute licensee’s consent to the appointment are in writing and state the period of appointment; and	15 16 17
(b)	the appointment, consent and evidence of any insurance the substitute licensee is required to have are—	18 19
(i)	kept at the licensee’s registered office; and	20
(ii)	made available for immediate inspection by an inspector who asks to see them.	21 22
	Maximum penalty—100 penalty units.	23
(3)	A principal licensee who will be absent from the licensee’s registered office for a period of more than 30 days must apply to the chief executive in the approved form for the appointment or the extension of the appointment of an adult (the <i>nominated person</i>) as the licensee’s substitute licensee.	24 25 26 27 28
	Maximum penalty—200 penalty units.	29
(4)	If the principal licensee is a person for whom an administrator has been appointed under the <i>Guardianship and</i>	30 31

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- Administration Act 2000* or is deceased, the licensee's representative may make the application under subsection (3). 1
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- (5) The application must be accompanied by— 3
- (a) the nominated person's signed consent to the appointment; and 4
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 - (b) enough information about the nominated person to enable the chief executive to decide whether the person— 6
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8
 - (i) is a suitable person to hold a licence; and 9
 - (ii) is sufficiently qualified to perform the licensee's activities during the period; and 10
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 - (iii) if the licensee is required as a condition of the licensee's licence to hold insurance—is covered by the insurance or holds insurance that complies with the requirements of the condition; and 12
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 - (c) the application fee prescribed under a regulation; and 16
 - (d) if, before or when the application is made, a criminal history costs requirement is made of the principal licensee—the amount of the costs required to be paid. 17
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- (6) In this section— 20
- principal licensee*** includes— 21
- (a) for a licensee for whom an administrator has been appointed under the *Guardianship and Administration Act 2000*—the licensee's administrator; and 22
23
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 - (b) for a deceased licensee—the licensee's personal representative. 25
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- representative***, of a principal licensee, means— 27
- (a) for a licensee for whom an administrator has been appointed under the *Guardianship and Administration Act 2000*—the licensee's administrator; or 28
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 - (b) for a deceased licensee—the licensee's personal representative. 31
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[s 52]

52	Appointment of substitute licensee—employed licensee in charge of a licensee’s business at a place	1 2
(1)	This section applies if an employed licensee who is in charge of a principal licensee’s business at a place will be absent from the place for any reason, other than the employed licensee’s resignation or termination of employment.	3 4 5 6
(2)	If the employed licensee will be absent from the place for a period of not more than 30 days, the principal licensee may appoint an adult as the employed licensee’s substitute licensee for the period if the adult consents to the appointment.	7 8 9 10
(3)	The principal licensee must ensure an appointment under subsection (2) and the person’s consent to the appointment are—	11 12 13
(a)	in writing and state the period of appointment; and	14
(b)	kept at the licensee’s registered office; and	15
(c)	made available for immediate inspection by an inspector who asks to see them.	16 17
	Maximum penalty—100 penalty units.	18
(4)	If the employed licensee will be absent from the place for a period of more than 30 days, the principal licensee who employs the employed licensee must apply to the chief executive in the approved form for the appointment or the extension of the appointment of an adult (also the <i>nominated person</i>) as the licensee’s substitute licensee.	19 20 21 22 23 24
	Maximum penalty—200 penalty units.	25
(5)	The application must be accompanied by—	26
(a)	the nominated person’s signed consent to the appointment; and	27 28
(b)	enough information about the nominated person to enable the chief executive to decide whether the person is—	29 30 31
(i)	a suitable person to hold a licence; and	32

	(ii) sufficiently qualified to perform the employed licensee's activities during the period; and	1 2
	(c) the application fee prescribed under a regulation; and	3
	(d) if, before or when the application is made, a criminal history costs requirement is made of the principal licensee—the amount of the costs required to be paid.	4 5 6
(6)	In this section—	7
	<i>principal licensee</i> includes—	8
	(a) for a licensee for whom an administrator has been appointed under the <i>Guardianship and Administration Act 2000</i> —the licensee's administrator; and	9 10 11
	(b) for a deceased licensee—the licensee's personal representative.	12 13
53	Chief executive may appoint or refuse to appoint substitute licensee	14 15
(1)	The chief executive may decide to appoint or refuse to appoint a nominated person mentioned in section 51(3) or 52(4) as a licensee's substitute licensee.	16 17 18
(2)	The chief executive may appoint the nominated person only if the chief executive is satisfied that the person—	19 20
	(a) is, under division 5, a suitable person to hold a licence; and	21 22
	(b) is sufficiently qualified to perform the licensee's activities during the period of the licensee's absence; and	23 24 25
	(c) if the licensee is required as a condition of the licensee's licence to hold insurance—is covered by the insurance or holds insurance that complies with the requirements of the condition.	26 27 28 29
(3)	An appointment under this section may be made subject to the conditions the chief executive considers appropriate.	30 31

[s 54]

- (4) The chief executive must give written notice of the appointment to the licensee and the substitute licensee. 1
2
- (5) If the chief executive decides to refuse to appoint the nominated person or impose conditions on the appointment, the chief executive must give the licensee an information notice about the decision within 14 days after making the decision. 3
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- (6) The *Acts Interpretation Act 1954*, section 27B, does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner to the chief executive under section 30(3). 8
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54 Substitute licensee 12

- (1) On appointment, a substitute licensee— 13
- (a) must act as substitute for the licensee for whom the substitute is appointed; and 14
15
- (b) is taken to be the licensee during the period of the appointment. 16
17
- (2) A licensee for whom a substitute has been appointed must not act under the authority of the licensee's licence while the appointment of the substitute licensee continues. 18
19
20
- Maximum penalty—200 penalty units. 21
- (3) The appointment of the substitute licensee ends if— 22
- (a) the period of the appointment ends; or 23
- (b) the principal licensee gives written notice to end the appointment from a date stated in the notice— 24
25
- (i) for a substitute licensee appointed under section 51(1) or 52(2)—to the substitute licensee; or 26
27
- (ii) for a substitute licensee appointed under section 53—to the chief executive and the substitute licensee; or 28
29
30
- (c) the substitute licensee gives written notice to end the appointment from a date stated in the notice— 31
32

(i)	for a substitute licensee appointed under section 51(1) or 52(2)—to the principal licensee who made the appointment; or	1 2 3
(ii)	for a substitute licensee appointed under section 53—to the chief executive and the principal licensee who applied for the appointment; or	4 5 6
(d)	the chief executive revokes the substitute licensee’s appointment; or	7 8
(e)	the licensee’s licence is suspended or cancelled; or	9
(f)	if the licensee is a principal licensee—the licensee stops carrying on business as a licensee.	10 11
55	Limitation on period of substitution	12
(1)	A principal licensee may not appoint a substitute licensee for himself or herself for more than 12 weeks in any period of 12 months.	13 14 15
(2)	A principal licensee may not appoint a substitute licensee for an employed licensee for more than 12 weeks in any period of 12 months.	16 17 18
(3)	The chief executive may not appoint a substitute licensee for a licensee for more than 26 weeks in any period of 12 months.	19 20
Subdivision 3	General	21
56	Amendment of licence conditions	22
(1)	The chief executive may amend the conditions of a licence—	23
(a)	on the licensee’s application; or	24
(b)	on the order of QCAT after a disciplinary hearing; or	25
(c)	on the chief executive’s own initiative.	26
	<i>Note—</i>	27
	QCAT may deal with the conditions of a person’s licence under section 199.	28 29

[s 56]

- (2) An application under subsection (1)(a) must be made in the approved form and be accompanied by the application fee prescribed under a regulation. 1
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- (3) Before deciding to make an amendment under subsection (1)(a), the chief executive must be satisfied the licensee meets the requirements the chief executive considers the licensee must meet to be eligible for the amendment. 4
5
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7
- (4) Before deciding to make an amendment under subsection (1)(c), the chief executive must— 8
9
- (a) give written notice to the licensee— 10
- (i) of the particulars of the proposed amendment; and 11
- (ii) that the licensee may make written submissions to the chief executive about the proposed amendment before a stated day, not later than 14 days after the notice is given to the licensee; and 12
13
14
15
- (b) have regard to submissions made to the chief executive by the licensee before the stated day. 16
17
- (5) Subsection (4) does not apply if the chief executive decides that the amendment must be made urgently— 18
19
- (a) to avoid potential claims against the fund; or 20
- (b) to ensure compliance with this Act or the Administration Act. 21
22
- (6) If the chief executive decides to amend the conditions of a licence under subsection (1)(c), the chief executive must give the licensee an information notice about the decision within 14 days after making the decision. 23
24
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- (7) The amendment takes effect— 27
- (a) on the day the written notice of the amendment is given to the licensee; or 28
29
- (b) if a later day is stated in the notice, on the stated day. 30
- (8) If the chief executive decides to refuse to make an amendment requested under subsection (1)(a), the chief executive must 31
32

	give the applicant an information notice about the decision within 14 days after making the decision.	1 2
57	Return of licence for amendment or replacement	3
	(1) The chief executive may require a licensee to produce the licensee's licence for amendment or replacement within a stated period of not less than 14 days if the chief executive intends to—	4 5 6 7
	(a) amend the conditions of the licence under section 56; or	8
	(b) replace the licence under section 67(5).	9
	(2) The licensee must comply with the requirement unless the person has a reasonable excuse.	10 11
	Maximum penalty—100 penalty units.	12
58	Return of licence for suspension or cancellation	13
	(1) A person whose licence has been suspended or cancelled under section 229(1) or an order made by QCAT must return the licence to the chief executive within 14 days after the suspension or cancellation unless the person has a reasonable excuse.	14 15 16 17 18
	Maximum penalty—100 penalty units.	19
	(2) Subsection (1) does not apply if section 61(6), 62(2) or 63(5) applies.	20 21
59	Surrender of licence	22
	(1) A licensee may surrender the licensee's licence by giving written notice to the chief executive and returning the licence.	23 24
	(2) A licence surrendered under this section stops having effect on the day it is surrendered.	25 26

[s 60]

60	Licence may be deactivated	1
(1)	A licensee may ask the chief executive to deactivate the licensee's licence.	2 3
(2)	A request under subsection (1) must be made in the approved form and be accompanied by the licensee's licence and the fee prescribed under a regulation.	4 5 6
(3)	The licence is taken to be deactivated when the request, the licence and the prescribed fee are received by the chief executive under subsection (2).	7 8 9
(4)	A licence that is deactivated does not authorise the licensee to perform an activity under the authority of the licence.	10 11
(5)	The deactivation of a licence under this section does not—	12
	(a) affect the term of the licence; or	13
	(b) entitle the licensee to a refund of fees for the licence for the balance of the licence's term.	14 15
(6)	The holder of a deactivated licence may apply to have the licence renewed under section 43 or restored under section 46 as a deactivated licence at a reduced fee prescribed under a regulation.	16 17 18 19
(7)	A licensee may ask the chief executive to reactivate the licence.	20 21
(8)	However, if the licence has been deactivated for 5 years or more, the licence may be reactivated only if the licensee satisfies any educational or other requirements applying under this Act to an applicant for a licence of the type to be reactivated.	22 23 24 25 26
(9)	A request under subsection (7) must be made in the approved form and be accompanied by the fee prescribed under a regulation.	27 28 29

Division 11	Suspension and cancellation of licences	1 2
61	Immediate suspension	3
(1)	This section applies if—	4
(a)	the chief executive reasonably considers that a licensee’s licence was obtained, or renewed or restored, because of materially incorrect or misleading information; or	5 6 7
(b)	the chief executive reasonably considers that an irregularity or deficiency exists in a licensee’s trust account; or	8 9 10
(c)	the chief executive is satisfied a licensee has failed to file an audit report as required under the Administration Act, section 35(2)(b); or	11 12 13
(d)	a receiver is appointed under the Administration Act, section 47 over property—	14 15
(i)	held by a licensee; or	16
(ii)	held by another person for a licensee; or	17
(iii)	recoverable by a licensee; or	18
(e)	the chief executive reasonably considers that a licensee—	19 20
(i)	has contravened or is contravening this Act or the Administration Act; or	21 22
(ii)	has contravened PAMDA; or	23
(iii)	is likely or proposing to engage in conduct that would contravene this Act or the Administration Act.	24 25 26
(2)	The chief executive may, whether or not disciplinary proceedings have been started under this Act—	27 28
(a)	suspend the licensee’s licence; or	29
(b)	without limiting paragraph (a), for subsection (1)(b), suspend a licence held by an employee of the licensee if	30 31

[s 62]

- the chief executive considers, on reasonable grounds, 1
the employee is responsible in any way for the 2
irregularity or deficiency in the licensee's trust account. 3
- (3) If the chief executive suspends a licence for a reason 4
mentioned in subsection (1)(a), (b), (d) or (e), the licence may 5
be suspended for the period, of not more than 28 days, and on 6
the conditions the chief executive decides. 7
- (4) If the chief executive suspends a licence for the reason 8
mentioned in subsection (1)(c), the licence is suspended until 9
whichever of the following happens first— 10
- (a) the licensee files the required audit report; 11
- (b) an application to QCAT for the cancellation of the 12
licence is heard and decided. 13
- (5) The chief executive must give the licensee an information 14
notice about the decision to suspend the licensee's licence 15
within 14 days after the suspension. 16
- (6) The licensee must return the licence to the chief executive 17
within 14 days after the licensee receives the notice, unless 18
the person has a reasonable excuse. 19
- Maximum penalty for subsection (6)—100 penalty units. 20

62 Immediate cancellation 21

- (1) A licensee's licence is cancelled on the happening of any of 22
the following events— 23
- (a) the licensee is convicted of a serious offence; 24
- (b) if the licensee is an individual, the licensee is an 25
insolvent under administration; 26
- (c) if the licensee is a corporation, the licensee has been 27
wound up or deregistered under the Corporations Act. 28
- (2) The licensee must return the licence to the chief executive 29
within 14 days after the happening of an event mentioned in 30
subsection (1), unless the licensee has a reasonable excuse. 31
- Maximum penalty for subsection (2)—100 penalty units. 32

63	Cancellation of motor dealer licence—identified participant	1 2
(1)	The chief executive may cancel a motor dealer licence if the chief executive becomes aware the following person is an identified participant in a criminal organisation—	3 4 5
(a)	the licensee;	6
(b)	if the licensee is a corporation—an executive officer of the corporation.	7 8
(2)	The chief executive must give the licensee an information notice for the decision within 14 days after making the decision.	9 10 11
(3)	The <i>Acts Interpretation Act 1954</i> , section 27B, does not apply to the information notice.	12 13
(4)	The decision takes effect on the day the chief executive gives the information notice under subsection (2).	14 15
(5)	The licensee must return the licence to the chief executive within 14 days after the information notice is given, unless the licensee has a reasonable excuse.	16 17 18
	Maximum penalty for subsection (5)—100 penalty units.	19

Division 12 **General provisions about licences** 20

64	Form of licence	21
(1)	A licence must be in the approved form.	22
(2)	However, the chief executive may approve—	23
(a)	a form of licence for office display purposes; and	24
	<i>Example—</i>	25
	a licence in the form of a certificate that may be framed and displayed in an office	26 27
(b)	a form of licence for personal identification purposes.	28

[s 65]

- (3) The chief executive may also issue a form of licence for a corporation endorsed with the categories of licence issued in the corporation's name. 1
2
3
- (4) The licence must contain the following particulars— 4
- (a) the name of the licensee; 5
 - (b) the date of issue of the licence; 6
 - (c) the expiry date of the licence; 7
 - (d) other particulars prescribed under a regulation. 8
- Maximum penalty—100 penalty units. 9
- 65 Requirement to keep copy of licence available for inspection 10
11**
- (1) A licensee that is a corporation must keep a copy of the licensee's licence available for inspection at each place of business of the licensee. 12
13
14
- Maximum penalty—100 penalty units. 15
- (2) A principal licensee must keep a copy of the principal licensee's licence available for inspection at each place of business of the principal licensee. 16
17
18
- Maximum penalty—100 penalty units. 19
- (3) A licensee employed by a principal licensee must keep a copy of the licensee's licence available for inspection at each place of business where the licensee is employed by the principal licensee as an employed licensee. 20
21
22
23
- Maximum penalty—100 penalty units. 24
- 66 Term of licence 25**
- A licence may be issued for a 1 year or 3 year term. 26

67	Replacement licences	1
(1)	A licensee may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged licence.	2 3
(2)	The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.	4 5
(3)	The chief executive must grant the application if the chief executive is satisfied the licence has been lost, stolen or destroyed, or damaged in a way to require its replacement.	6 7 8
(4)	If the chief executive grants the application, the chief executive must issue another licence to the applicant to replace the original licence.	9 10 11
(5)	The chief executive may also replace a licence if—	12
(a)	either—	13
(i)	the licensee has given written notice to the chief executive of a prescribed change; or	14 15
(ii)	the chief executive reasonably believes a prescribed change for the licensee has happened; and	16 17 18
(b)	the chief executive is satisfied the prescribed change requires a replacement of the licence.	19 20
(6)	If the chief executive replaces a licence under this section—	21
(a)	the licence continues to be subject to the same conditions and term to which the licence was subject before being replaced; and	22 23 24
(b)	the licensee must pay the chief executive the fee prescribed under a regulation.	25 26
(7)	In this section—	27
	<i>prescribed change</i> means a prescribed change under section 69.	28 29

[s 68]

68	Register of licences	1
(1)	The chief executive must keep a register of licences and applications for licences (the <i>licence register</i>).	2 3
(2)	The licence register must contain the following particulars—	4
(a)	for each applicant for a licence—	5
(i)	the applicant’s name; and	6
(ii)	if the applicant intends to carry on business under the licence—the place where the applicant intends to carry on business; and	7 8 9
(iii)	the category of licence applied for; and	10
(iv)	the date of the application; and	11
(v)	the application number;	12
(b)	for each licensee—	13
(i)	the licensee’s name; and	14
(ii)	the licensee’s registered office; and	15
(iii)	the category of the licensee’s licence; and	16
(iv)	the dates of issue and expiry of the licensee’s current licence; and	17 18
(v)	any conditions imposed on the licence; and	19
(vi)	if the licensee is a corporation—the name of the individual in charge of the licensee’s business at the licensee’s registered office; and	20 21 22
(vii)	if the licensee is a director of a licensed corporation—the name of the licensed corporation; and	23 24 25
(viii)	if the licensee is an employee of another licensee—the name of the licensee’s employer; and	26 27
(ix)	the licensee’s licence number; and	28
(x)	particulars of any surrender, suspension or cancellation of the licensee’s licence.	29 30

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- (3) A person may, on payment of the fee prescribed under a regulation, inspect or get a copy of details in the part of the register containing the particulars mentioned in subsection (2)—
- (a) at a place or places decided by the chief executive; or
 - (b) by using a computer.
- (4) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.
- (5) The register may be kept in any way the chief executive considers appropriate.
- (6) In this section—
contain includes record and store.

Division 13 General provisions about licensees 13

69 Licensees to notify chief executive of changes in circumstances 14 15

- (1) A licensee must give written notice to the chief executive of a prescribed change in the licensee's circumstances within 14 days after the change.
- Maximum penalty—100 penalty units.
- (2) In this section—
prescribed change means a change prescribed under a regulation.

70 Registered office 23

- A licensee's *registered office* is—
- (a) for a principal licensee—
 - (i) the place the licensee states in the licensee's application for a licence as the licensee's principal place of business; or

[s 71]

	(ii) another place notified to the chief executive by the licensee in the approved form as the licensee's principal place of business; and	1 2 3
	(b) for an employed licensee—	4
	(i) the place the licensee states in the licensee's application for a licence as the licensee's business address; or	5 6 7
	(ii) another place notified to the chief executive by the licensee in the approved form as the licensee's business address.	8 9 10
71	Licensee must notify chief executive of change in place of business etc.	11 12
	(1) A principal licensee must notify the chief executive in the approved form of—	13 14
	(a) any change in the licensee's principal place of business within 14 days after the change; and	15 16
	(b) the closure of any place where the licensee carries on business within 14 days after the closure; and	17 18
	(c) the opening of any place where the licensee carries on business within 14 days after the opening.	19 20
	Maximum penalty—200 penalty units.	21
	(2) An employed licensee must notify the chief executive in the approved form of any change in the licensee's business address within 14 days after the change.	22 23 24
	Maximum penalty—200 penalty units.	25
72	Advertising	26
	A licensee must not publish, or permit to be published, in a newspaper or elsewhere an advertisement for the licensee's business without stating in the advertisement the particulars prescribed under a regulation.	27 28 29 30
	Maximum penalty—100 penalty units.	31

73	Licensee to obtain statement from seller of vehicle	1
(1)	A licensee must, when buying a motor vehicle or accepting a motor vehicle for sale on consignment from a person (the <i>seller</i>) in the course of carrying on the licensee's business, obtain from the seller a statement, signed by the seller, stating the particulars about the seller and the vehicle prescribed under a regulation.	2 3 4 5 6 7
	Maximum penalty—200 penalty units.	8
(2)	The licensee must keep a copy of the statement at the licensee's place of business.	9 10
	Maximum penalty—200 penalty units.	11
(3)	This section does not apply if the seller is—	12
	(a) a financier of the business of the licensee; or	13
	(b) another licensee.	14
74	Licensee to give statement to buyer of vehicle	15
(1)	A licensee must, immediately after selling a motor vehicle to a person (the <i>buyer</i>) in the course of carrying on the licensee's business, give the buyer a statement, signed by the licensee, stating the particulars prescribed under a regulation about—	16 17 18 19
	(a) the vehicle; and	20
	(b) the vehicle's owner immediately before the sale.	21
	Maximum penalty—200 penalty units.	22
(2)	The licensee must keep a copy of the statement at the licensee's place of business.	23 24
	Maximum penalty—200 penalty units.	25
(3)	Nothing in this section prevents the statement being contained in the contract for sale of the vehicle.	26 27

[s 75]

75	Production of licence	1
	A licensee must, if asked by a person with whom the licensee is dealing, produce the licensee’s licence for inspection by the person.	2 3 4
	Maximum penalty—100 penalty units.	5
Part 3	Motor dealers	6
Division 1	Motor dealers’ authorisation and responsibilities	7 8
76	What a motor dealer licence authorises	9
(1)	A motor dealer licence authorises the holder of the licence (<i>motor dealer</i>) to perform the following activities in the carrying on of a business of motor dealing—	10 11 12
(a)	to acquire, primarily for resale, used motor vehicles;	13
(b)	to sell used motor vehicles;	14
(c)	to sell used motor vehicles on consignment as an agent for others for reward;	15 16
(d)	to sell a leased motor vehicle to the lessee under the terms of the lease;	17 18
(e)	to acquire used motor vehicles, whether or not as complete units, to break up for sale as parts;	19 20
(f)	to sell used motor vehicles mentioned in paragraph (e) as parts;	21 22
(g)	to negotiate, under a consultancy arrangement, for a person who is not a motor dealer or chattel auctioneer for the purchase or sale of a used motor vehicle for the person.	23 24 25 26
(2)	A motor dealer may perform the activities—	27

(a)	in the carrying on of a business, either alone or with others; or	1 2
(b)	as an employee of a motor dealer who carries on the business of motor dealing.	3 4
(3)	Despite subsection (1), a motor dealer licence does not authorise the holder to sell a used motor vehicle by auction.	5 6
(4)	However, subsection (3) does not prevent a motor dealer selling a used motor vehicle by auction by employing a chattel auctioneer to sell the vehicle by auction for the motor dealer.	7 8 9
(5)	In this section—	10
	<i>business of motor dealing</i> does not include the business of a financier.	11 12
	<i>consultancy arrangement</i> , for the purchase or sale of a used motor vehicle, means an arrangement under which a person advises someone else—	13 14 15
(a)	where or from whom the other person can buy a used motor vehicle; or	16 17
(b)	where or to whom the other person can sell a used motor vehicle.	18 19
77	Responsibility for acts and omissions of motor salespersons	20 21
(1)	A motor dealer who is a principal licensee must take reasonable steps to ensure each motor salesperson employed by the dealer is properly supervised and complies with this Act.	22 23 24 25
(2)	A motor dealer who is an employed licensee in charge of a licensee’s business at a place of business must take reasonable steps to ensure each motor salesperson employed at the place is properly supervised and complies with this Act.	26 27 28 29
(3)	A motor dealer who fails to comply with subsection (1) or (2) is liable to disciplinary action under part 7, division 1, subdivision 2.	30 31 32

[s 78]

Division 2	Carrying on business	1
78	Carrying on of business under motor dealer licence	2
	An individual who carries on the business of a motor dealer with others is not required to hold a motor dealer licence if—	3 4
	(a) at least 1 of the persons with whom the individual carries on business is a motor dealer; and	5 6
	(b) the individual does not perform the activities of a motor dealer; and	7 8
	(c) the individual is a suitable person to hold a licence.	9
79	Licensee to be in charge of motor dealer’s business at a place	10 11
	(1) A motor dealer who is an individual and a principal licensee must—	12 13
	(a) be in charge of the motor dealer’s business at the dealer’s registered office; and	14 15
	(b) if the motor dealer has more than 1 place of business—ensure that at each other place of business a motor dealer who is an individual is in charge of the dealer’s business at the place.	16 17 18 19
	Maximum penalty—200 penalty units.	20
	(2) A motor dealer that is a corporation and a principal licensee (<i>corporate dealer</i>) must ensure that—	21 22
	(a) the individual in charge of the corporate dealer’s business at its registered office is a motor dealer; and	23 24
	(b) if the corporate dealer has more than 1 place of business—at each other place of business an individual who is a motor dealer is in charge of the corporate dealer’s business at the place.	25 26 27 28

Maximum penalty—	1
(a) for an individual guilty under the Criminal Code, chapter 2 of an offence—200 penalty units; or	2 3
(b) for a corporation—1000 penalty units.	4
(3) An individual must not be in charge of a motor dealer’s business at more than 1 place.	5 6
Maximum penalty—200 penalty units.	7
(4) It is not an offence against this section for a motor dealer who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.	8 9 10 11
(5) For subsection (4), land is <i>contiguous</i> with other land only if the parcels of land have a common boundary that is not separated by a public road.	12 13 14
80 Motor dealer dealing in motor vehicles	15
(1) A motor dealer who is performing an activity the motor dealer is authorised to perform in relation to a used motor vehicle under the motor dealer’s licence is taken to be performing the activities of a motor dealer whether or not—	16 17 18 19
(a) the motor dealer is the registered operator, as defined under the <i>Transport Operations (Road Use Management) Act 1995</i> , of the motor vehicle; or	20 21 22
(b) the motor dealer or the motor dealer’s associate used the motor vehicle for private purposes.	23 24
(2) The motor dealer must disclose to a potential buyer or seller of a vehicle that the motor dealer is a licensed motor dealer.	25 26
Maximum penalty—400 penalty units.	27
(3) Also, if a person agrees to purchase a motor vehicle from, or sell a motor vehicle to, the motor dealer, the person must sign a written acknowledgement stating the motor dealer disclosed to the person that the motor dealer is a licensed motor dealer.	28 29 30 31

[s 81]

Division 3	Appointment	1
Subdivision 1	Requirements	2
81	Appointment—sale on consignment	3
(1)	A motor dealer must not act as a motor dealer for a person (a <i>client</i>) to sell the client’s motor vehicle on consignment unless—	4 5 6
(a)	the client first appoints the motor dealer in writing under this subdivision (a <i>motor dealer appointment</i>); or	7 8
(b)	a previous motor dealer appointment is assigned to the motor dealer under the terms of the appointment or under section 85 and the appointment is in force.	9 10 11
	Maximum penalty—200 penalty units.	12
(2)	A motor dealer appointment may be for the performance of—	13
(a)	a particular service within a stated period (a <i>single appointment</i>); or	14 15
(b)	a number of services from time to time while the appointment continues in force (a <i>continuing appointment</i>).	16 17 18
82	Content of appointment	19
(1)	A motor dealer appointment must state—	20
(a)	the relevant service to be performed by the motor dealer and how it is to be performed; and	21 22
(b)	for a single appointment—the period of the appointment; and	23 24
(c)	for a continuing appointment—the times when, circumstances in which, or occasions on which the relevant service is to be performed; and	25 26 27
(d)	the fees, charges and any commission payable for the relevant service; and	28 29

-
- (e) the expenses the motor dealer is authorised to incur in connection with the performance of the relevant service; and
- (f) the source and the estimated amount or value of any rebate, discount, commission or benefit that the motor dealer may receive for any expenses the motor dealer is authorised to incur in connection with the performance of the relevant service; and
- (g) any conditions, limitations or restrictions on the performance of the relevant service; and
- (h) when the fees, charges and any commission for the relevant service become payable; and
- (i) that the appointment may be revoked by either party 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.
- (2) In this section—
- expenses* includes—
- (a) advertising expenses; and
- (b) the cost of preparing a motor vehicle for sale.
- relevant service* means—
- (a) for a single appointment—the service to be performed under the appointment; or
- (b) for a continuing appointment—each of the services or categories of services to be performed at stated times, in stated circumstances or on stated occasions while the appointment is in force.

83 Form of appointment

- (1) A motor dealer appointment must be in the approved form.
- (2) The approved form must include a prominent statement that the client should seek independent legal advice before signing the appointment.

[s 84]

(3)	An appointment that does not comply with subsection (1) is ineffective from the time it is made.	1 2
84	Giving signed appointment to client	3
(1)	A motor dealer appointment must be signed and dated by the client and the motor dealer or someone authorised or apparently authorised to sign for the dealer.	4 5 6
(2)	The motor dealer must give a copy of the signed appointment to the client immediately after it is signed.	7 8
	Maximum penalty for subsection (2)—200 penalty units.	9
Subdivision 2	Assignment	10
85	Proposal for assignment of appointment	11
(1)	This section applies if a motor dealer who holds a motor dealer appointment from a client proposes to assign the appointment to another motor dealer (the <i>proposed assignee</i>) without changing the terms of the appointment.	12 13 14 15
(2)	However, this section does not apply to the assignment of a motor dealer appointment if—	16 17
(a)	the terms of the appointment authorise the assignment of the appointment; and	18 19
(b)	the assignment is made under the terms of the appointment.	20 21
(3)	At least 14 days before the motor dealer assigns the appointment, the motor dealer must give the client written notice of the proposed assignment.	22 23 24
(4)	The notice must state the following—	25
(a)	the proposed assignee’s name;	26
(b)	that the appointment is to be assigned without changing its terms;	27 28

(c)	the client may agree or refuse to agree to the proposed assignment;	1 2
(d)	when the proposed assignment is to take effect.	3
(5)	If the client agrees to the assignment and the motor dealer assigns the appointment under this section, the appointment is taken, for section 81, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.	4 5 6 7 8
Division 4	Particular conduct provisions	9
Subdivision 1	Consignment selling	10
86	Trade-ins	11
(1)	A motor dealer must not accept a trade-in from the buyer of a motor vehicle being sold on consignment. Maximum penalty—200 penalty units or 1 year’s imprisonment.	12 13 14 15
(2)	However, the motor dealer does not contravene subsection (1) if the dealer purchases the motor vehicle offered as a trade-in as part of a separate transaction between the dealer and the buyer.	16 17 18 19
Subdivision 2	Recovery of reward or expense	20
87	Commission may be claimed only for actual amounts	21
(1)	This section applies to a motor dealer who sells a motor vehicle on consignment for the payment of a commission.	22 23
(2)	The motor dealer must not claim commission worked out on an amount that is more than the actual sale price of the vehicle. Maximum penalty—200 penalty units.	24 25 26 27

[s 88]

- 88 Restriction on remedy for reward or expense** 1
- (1) A person is not entitled to sue for, or recover or keep, a reward 2
or expense for the performance of an activity as a motor 3
dealer unless, at the time the activity was performed, the 4
person— 5
- (a) held a motor dealer licence; and 6
- (b) was authorised under the person’s licence to sell motor 7
vehicles on consignment; and 8
- (c) had been properly appointed under division 3 by the 9
person to be charged with the reward or expense. 10
- (2) A person who sues for, or recovers or keeps, a reward or 11
expense for performance of an activity as a motor dealer other 12
than as provided by subsection (1) commits an offence. 13
- Maximum penalty for subsection (2)—200 penalty units. 14
- 89 Excess commission etc. to be repaid** 15
- (1) This section applies if— 16
- (a) a person is convicted of an offence against section 87(2) 17
or 88(2); and 18
- (b) the court convicting the person is satisfied on the 19
balance of probabilities that the person, in connection 20
with the offence, has recovered or retained from 21
someone (*client*) for whom the person performed an 22
activity an amount to which the person was not entitled. 23
- (2) The court must order the person to pay the amount to the 24
client. 25
- (3) The order must be made whether or not any penalty is 26
imposed on the conviction. 27
- (4) The client may file the order in a court having jurisdiction for 28
the recovery of a debt of an equal amount and the order may 29
be enforced as if it were a judgment of that court. 30

Subdivision 3	Interests in motor vehicles	1
90	Definition for sdiv 3	2
	In this subdivision—	3
	<i>obtain</i> includes being in any way concerned in obtaining.	4
91	Beneficial interest—options	5
(1)	A motor dealer commits an offence if the dealer obtains from the owner of a used motor vehicle, other than another motor dealer, an option to purchase the vehicle in which the dealer has a beneficial interest.	6 7 8 9
	Maximum penalty—200 penalty units or 3 years imprisonment.	10 11
(2)	A motor salesperson commits an offence if the salesperson obtains from the owner of a used motor vehicle, other than a motor dealer, an option to purchase the vehicle in which the salesperson has a beneficial interest.	12 13 14 15
	Maximum penalty—200 penalty units or 3 years imprisonment.	16 17
(3)	A motor dealer must not sell a motor vehicle if the motor dealer has a beneficial interest in an option to purchase the vehicle, other than an option to purchase given by another motor dealer.	18 19 20 21
	Maximum penalty—200 penalty units or 3 years imprisonment.	22 23
	<i>Note—</i>	24
	A person may make a claim, under the Administration Act, against the fund if the person suffers financial loss because of a contravention of this section.	25 26 27
92	Beneficial interest—other than options	1
(1)	This section applies to a motor vehicle placed by a person (<i>client</i>) with a motor dealer for sale on consignment, but does	2 3

[s 92]

- not apply if section 91 applies. 4
- (2) The motor dealer commits an offence if the motor dealer 5
obtains a beneficial interest in the vehicle. 6
- Maximum penalty—200 penalty units or 3 years 7
imprisonment. 8
- (3) A motor salesperson employed by the motor dealer commits 9
an offence if the salesperson obtains a beneficial interest in 10
the vehicle. 11
- Maximum penalty—200 penalty units or 3 years 12
imprisonment. 13
- (4) A person does not contravene subsection (2) or (3) if— 14
- (a) the person— 15
- (i) before a contract for the sale of the motor vehicle is 16
entered into, obtains the client's written 17
acknowledgement in the approved form that the 18
client— 19
- (A) is aware that the person is interested in 20
obtaining a beneficial interest in the motor 21
vehicle; and 22
- (B) consents to the person obtaining the interest; 23
and 24
- (ii) acts fairly and honestly in relation to the sale; and 25
- (b) no commission or other reward is payable for the sale; 26
and 27
- (c) the client is in substantially as good a position as the 28
client would be if the motor vehicle were sold at fair 29
market value. 30
- Note*— 31
- A person may make a claim, under the Administration Act, against the 32
fund if the person suffers financial loss because of a contravention of 33
this section. 34

93	Return of beneficial interest if in form of commission	1
(1)	This section applies if—	2
(a)	a person is convicted of an offence against section 92(2) or (3); and	3 4
(b)	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 someone (<i>client</i>) for whom the person performed an activity an amount of commission to which the person was not entitled.	5 6 7 8 9 10
(2)	The court must order the person to pay the amount to the client.	11 12
(3)	The order must be made whether or not any penalty is imposed on the conviction.	13 14
(4)	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.	15 16 17

Subdivision 4	Prescribed conduct provisions	18
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94	Prescribed conduct provisions	19
(1)	A regulation may provide for conduct standards for motor dealers and motor salespersons in carrying on motor dealing practice.	20 21 22
(2)	A provision mentioned in subsection (1) is a <i>prescribed conduct provision</i> .	23 24
	<i>Note—</i>	25
	A contravention of a prescribed conduct provision is grounds for starting disciplinary proceedings. See section 194(1)(b)(ii).	26 27

[s 95]

Subdivision 5	Sales of used motor vehicles that are written-off vehicles	1 2
95	Notice to be given about used motor vehicle—written-off vehicle	3 4
(1)	This section applies if a used motor vehicle that is an unregistered written-off vehicle is to be sold by a motor dealer, other than by auction, to a prospective buyer (the <i>buyer</i>).	5 6 7 8
(2)	Before the motor dealer sells the vehicle to the buyer, the motor dealer must tell the buyer that the vehicle is a written-off vehicle and state—	9 10 11
(a)	if the vehicle is a repairable write-off—that the vehicle is a repairable write-off and must pass a written-off vehicle inspection under a regulation under the <i>Transport Operations (Road Use Management) Act 1995</i> before it can be registered; or	12 13 14 15 16
(b)	if the vehicle is a statutory write-off—that the vehicle can not be registered.	17 18
	Maximum penalty—200 penalty units.	19
(3)	The motor dealer must also ask the buyer to sign an acknowledgement, printed in type no smaller than 12 point, that—	20 21 22
(a)	identifies the used motor vehicle as a written-off vehicle; and	23 24
(b)	states whether the vehicle is a repairable write-off or a statutory write-off.	25 26
	Maximum penalty—200 penalty units.	27
(4)	The motor dealer must—	28
(a)	give the original of the acknowledgement to the buyer; and	29 30
(b)	keep a copy of the acknowledgement.	31
	Maximum penalty—200 penalty units.	32

Division 5	Sale of motor vehicles by motor dealer	1 2
96	Obligation to give clear title	3
(1)	This section applies if a used motor vehicle is to be sold by or for a motor dealer (the <i>selling agent</i>) to someone else (the <i>buyer</i>), other than by auction.	4 5 6
	<i>Note—</i>	7
	For a sale by auction, see section 142.	8
(2)	The following person (the <i>responsible licensee</i>) must ensure the buyer has clear title to the motor vehicle at the time property in the vehicle passes to the buyer—	9 10 11
(a)	if the selling agent owns the motor vehicle or is appointed to sell the vehicle on consignment for someone other than another motor dealer or chattel auctioneer—the selling agent;	12 13 14 15
(b)	if the selling agent is selling the motor vehicle for another motor dealer or chattel auctioneer—the other motor dealer or chattel auctioneer for whom the selling agent is selling the vehicle.	16 17 18 19
	Maximum penalty—200 penalty units.	20
	<i>Note—</i>	21
	A person may make a claim, under the Administration Act, against the fund if the person suffers financial loss because of a contravention of this subsection.	22 23 24
(3)	In a proceeding for an offence against subsection (2), it is a defence for the defendant to prove that the defendant took all reasonable steps to ensure subsection (2) was complied with.	25 26 27
(4)	A proceeding against a motor dealer or chattel auctioneer for an offence against this section does not affect any civil liability of any person, including the motor dealer or chattel auctioneer, arising out of the same facts that constitute the offence.	28 29 30 31 32

[s 97]

(5)	Subsection (2) does not apply to the extent that a security interest in the motor vehicle is registered under the <i>Personal Property Securities Act 2009</i> (Cwlth).	1 2 3
(6)	In this section— <i>sold</i> includes sold on consignment.	4 5
97	Contract must contain statement of guarantee of clear title	6 7
(1)	A contract for the sale of a used motor vehicle by a selling agent must state that the responsible licensee guarantees that the buyer will have clear title to the vehicle when property in the vehicle passes to the buyer.	8 9 10 11
(2)	If the contract does not comply with subsection (1), the buyer by written notice given to the selling agent may avoid the contract.	12 13 14
(3)	The notice must be given to the selling agent within 7 days after the day property in the vehicle passes to the buyer.	15 16
Division 6	Cooling-off period	17
98	Definitions for div 6	18
	In this division—	19
	<i>business day</i> , for a motor dealer, means a day, other than a Sunday or public holiday, when the motor dealer’s place of business is open for business.	20 21 22
	<i>cooling-off period</i> see section 99.	23
	<i>non-refundable deposit</i> see sections 106(1) and 107(1).	24
	<i>used motor vehicle</i> does not include—	25
(a)	an unregistered motor vehicle—	26
(i)	that is incapable of being registered in Queensland because of its design; or	27 28

-
- (ii) intended to be used for wrecking or dismantling; or 1
 - (b) a commercial vehicle; or 2
 - (c) a caravan. 3

99 Meaning of *cooling-off period* 4

- (1) The *cooling-off period* for the purchase of a used motor 5
vehicle from a motor dealer starts on the day a contract for the 6
purchase of the vehicle is enforceable against the motor 7
dealer. 8
 - (2) The *cooling-off period* for the purchase of a used motor 9
vehicle ends— 10
 - (a) if the motor dealer’s actual close of business on the 11
motor dealer’s next business day is 5p.m. or later—at 12
the time of the motor dealer’s actual close of business on 13
that business day; or 14
- Examples—* 15
- 1 Assume the contract is entered into on Friday and is 16
immediately enforceable. Assume also the cooling-off 17
period is not affected by public holidays and that, on each 18
day the motor dealer is open for business, the motor dealer’s 19
actual close of business is not before 5p.m. The cooling-off 20
period ends at the time of the motor dealer’s actual close of 21
business on the following Saturday. 22
 - 2 Assume the contract is entered into on Friday afternoon, but 23
is conditional on a prior contract to purchase the vehicle not 24
being proceeded with by 5p.m. Saturday. Assume that the 25
prior contract is avoided at 4p.m. Saturday. Assume also the 26
cooling-off period is not affected by public holidays and 27
that, on each day the motor dealer is open for business, the 28
motor dealer’s actual close of business is not before 5p.m. 29
The cooling-off period ends at the time of the motor dealer’s 30
actual close of business on the following Monday. 31
- (b) if the motor dealer’s actual close of business on the 32
motor dealer’s next business day is earlier than 33
5p.m.—at the time of the motor dealer’s usual close of 34
business on the business day immediately following the 35
next business day; or 36

[s 100]

Example—

Assume the contract is entered into on Tuesday and the motor dealer closes for business on Wednesday at 1p.m. Assume also the cooling-off period is not affected by public holidays and that the contract is immediately enforceable. The cooling-off period ends at the time of the motor dealer's usual close of business on the following Thursday.

- (c) at any earlier time the person contracting for the purchase of the vehicle takes physical possession of the vehicle for a purpose other than—
 - (i) a vehicle inspection; or
 - (ii) a test drive.

100 Application of div 6

- (1) This division applies to sales of used motor vehicles by motor dealers.
- (2) However, this division does not apply to any of the following sales of used motor vehicles by a motor dealer—
 - (a) a sale by auction;
 - (b) a sale on consignment, unless the owner of the vehicle is a motor dealer or chattel auctioneer;
 - (c) a sale to another motor dealer.

101 Particular vehicles for sale on consignment to be identified as not being subject to cooling-off period

- (1) A motor dealer must not advertise or display for sale a motor vehicle for sale on consignment unless it is advertised or displayed for sale as a vehicle that is not subject to a cooling-off period in the way provided under a regulation.
Maximum penalty—100 penalty units.
- (2) Subsection (1) does not apply to a sale on consignment of a motor vehicle owned by a motor dealer or chattel auctioneer.
- (3) Also, to remove any doubt, it is declared that subsection (1) is not limited by section 100(2)(b).

102	Notice to be given about used motor vehicle—no prior contract	1 2
(1)	This section applies if a used motor vehicle is not subject to any prior contract with a prospective buyer for its sale.	3 4
(2)	A motor dealer must give to the prospective buyer of the vehicle a written statement in the approved form under this section.	5 6 7
	Maximum penalty—200 penalty units.	8
(3)	The statement must include the following—	9
(a)	the motor vehicle, clearly identified, to which the statement relates;	10 11
(b)	the names and addresses of the motor dealer and prospective buyer;	12 13
(c)	a clear statement that the prospective buyer may avoid any contract for the purchase of the vehicle from the motor dealer during the cooling-off period;	14 15 16
(d)	the day and time when the statement is given;	17
(e)	the day and time the cooling-off period ends;	18
(f)	the amount of non-refundable deposit forfeited by the prospective buyer if the buyer avoids the contract.	19 20
(4)	The statement must be signed and dated by the prospective buyer and the motor dealer or someone authorised or apparently authorised to sign for the motor dealer.	21 22 23
(5)	The motor dealer or authorised person must give the original of the statement to the prospective buyer immediately before the buyer signs any contract for the purchase of the vehicle.	24 25 26
	Maximum penalty—200 penalty units.	27
(6)	The motor dealer must keep a copy of the statement.	28
	Maximum penalty—100 penalty units.	29

[s 103]

103	Option to purchase during cooling-off period	1
(1)	This section applies if a used motor vehicle is subject to a prior contract with a prospective buyer that is not immediately enforceable.	2 3 4
(2)	The motor dealer may give not more than 1 other person (<i>option holder</i>) an option to purchase the vehicle even though the vehicle is subject to a prior contract.	5 6 7
(3)	If the motor dealer gives an option to purchase the motor vehicle to someone else while an option to purchase is still current, the dealer commits an offence.	8 9 10
	Maximum penalty—100 penalty units.	11
(4)	The motor dealer must give the option holder a written statement under this section.	12 13
	Maximum penalty—200 penalty units.	14
(5)	The statement must include the following—	15
(a)	the motor vehicle, clearly identified, to which the statement relates;	16 17
(b)	the names and addresses of the motor dealer and option holder;	18 19
(c)	the option to purchase is conditional on a prior contract for the sale of the vehicle being avoided by the buyer under the prior contract;	20 21 22
(d)	the option holder has no legally enforceable rights under the option to purchase the vehicle, unless the prior contract is avoided;	23 24 25
(e)	when the option holder may exercise the holder's rights under the option;	26 27
(f)	the day and time when the statement is given;	28
(g)	the amount of non-refundable deposit forfeited by the option holder if the holder declines to enter into a contract for the purchase of the vehicle for any reason other than because the prior contract was not avoided;	29 30 31 32
(h)	any other thing prescribed under a regulation.	33

[s 104]

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- (6) The statement must be signed and dated by the option holder and the motor dealer or someone authorised or apparently authorised to sign for the motor dealer. 1
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- (7) The motor dealer or authorised person must give the statement to the option holder immediately before the option holder signs the option to purchase the vehicle. 4
5
6
Maximum penalty—200 penalty units. 7
- (8) The motor dealer must keep a copy of the statement. 8
Maximum penalty—100 penalty units. 9
- 104 Buyer's rights if notice not given or materially defective 10**
- (1) This section applies if a person (*buyer*) has purchased a used motor vehicle and— 11
12
- (a) the buyer has not been given the statement under section 102; or 13
14
- (b) the statement has been given to the buyer, but the statement is defective in a material particular. 15
16
- (2) The buyer, by written notice given to the motor dealer, may avoid the contract for the sale of the used motor vehicle. 17
18
- (3) The notice must be given to the motor dealer within 7 days after the day property in the vehicle passes to the buyer. 19
20
- (4) If the contract is avoided under this section, the motor dealer— 21
22
- (a) must do everything in the motor dealer's power to return the buyer to the position the buyer was in before the vehicle was purchased; or 23
24
25
- (b) if the buyer can not be returned to that position—is liable for any financial loss suffered by the buyer because the buyer can not be returned to that position. 26
27
28
- Note—* 29
- A person may make a claim, under the Administration Act, against the fund if the person suffers financial loss because of a contravention of this subsection. 30
31
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[s 105]

105 Contract must contain cooling-off clause

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- (1) A contract for the sale of a used motor vehicle by a motor dealer must contain a clause clearly headed ‘COOLING-OFF PERIOD’ stating the following—
 - (a) the day and time the cooling-off period starts;
 - (b) the day and time the cooling-off period ends;
 - (c) property in the motor vehicle does not pass to the buyer until the end of the cooling-off period, unless the buyer takes physical possession of the vehicle for a purpose other than—
 - (i) a vehicle inspection; or
 - (ii) a test drive;
 - (d) the buyer or the buyer’s agent may possess the vehicle during the cooling-off period, but only to have the vehicle independently inspected or to test drive the vehicle;
 - (e) the buyer may avoid the contract at any time during the cooling-off period by giving written notice to that effect to the dealer in accordance with this Act;
 - (f) the amount of any non-refundable deposit paid by the buyer if the contract is avoided during the cooling-off period;
 - (g) if the contract is avoided during the cooling-off period, the motor dealer must return to the buyer—
 - (i) any trade-in vehicle offered by the buyer that the motor dealer has taken possession of; and
 - (ii) any deposit paid by the buyer, less the amount of non-refundable deposit.
 - (2) If the contract does not comply with subsection (1), the buyer, by written notice given to the motor dealer, may avoid the contract for the sale of the used motor vehicle.
 - (3) The notice must be given to the motor dealer within 7 days after the day property in the vehicle passes to the buyer.

-
- 106 Consideration for cooling-off period** 1
- (1) The consideration payable for the cooling-off period for the 2
purchase of a used motor vehicle (the *non-refundable* 3
deposit) is the amount prescribed or worked out under a 4
regulation. 5
- (2) The non-refundable deposit may be paid as the deposit or part 6
of the deposit for the vehicle. 7
- (3) If the contract is not avoided during the cooling-off period, 8
the non-refundable deposit must be deducted from the 9
purchase price of the vehicle. 10
- (4) If a deposit is paid for the vehicle— 11
- (a) if the amount of the deposit is more than the amount of 12
the non-refundable deposit—the deposit is taken to 13
include the non-refundable deposit; or 14
- (b) if the amount of the deposit is equal to or less than the 15
amount of the non-refundable deposit—the deposit is 16
taken to be the non-refundable deposit. 17
- (5) If no deposit is paid for the vehicle, the motor dealer is taken 18
to have waived the payment of the non-refundable deposit. 19
- 107 Consideration for option** 20
- (1) The consideration payable for an option for the purchase of a 21
used motor vehicle under section 103 (also the 22
non-refundable deposit) is the amount prescribed or worked 23
out under a regulation. 24
- (2) If the option holder declines to enter into a contract for the 25
purchase of the vehicle for any reason other than because the 26
prior contract was not avoided, the amount of non-refundable 27
deposit is forfeited by the option holder. 28
- (3) If the option holder enters into a contract for the purchase of 29
the vehicle, the amount of non-refundable deposit paid for the 30
option is taken to be the non-refundable deposit for the 31
cooling-off period. 32

[s 108]

- (4) If no consideration is paid for the option— 1
- (a) the motor dealer is taken to have waived the payment of 2
the non-refundable deposit for the option; and 3
- (b) the option is enforceable by the option holder against 4
the motor dealer despite the absence of consideration. 5
- 108 Harassment or coercion 6**
- A motor dealer or other person must not harass or coerce a 7
person for the purpose of dissuading or preventing the person 8
from exercising a right conferred on the person by this 9
division. 10
- Maximum penalty—200 penalty units or 2 years 11
imprisonment. 12
- 109 Property does not pass during cooling-off period 13**
- (1) Property in a used motor vehicle subject to a cooling-off 14
period does not pass to the buyer of the vehicle until the end 15
of the cooling-off period. 16
- (2) Property in a motor vehicle offered to the motor dealer as a 17
trade-in does not pass to the dealer until the end of the 18
cooling-off period. 19
- (3) A deposit, other than a non-refundable deposit, given to a 20
motor dealer by a buyer of a used motor vehicle from the 21
dealer remains the property of the buyer until the end of the 22
cooling-off period. 23
- 110 Buyer may avoid contract during cooling-off period 24**
- The buyer of a used motor vehicle may avoid the contract to 25
purchase the vehicle during the cooling-off period. 26
- 111 Procedure for avoidance 27**
- (1) A buyer of a used motor vehicle who wishes to avoid the 28
contract to purchase the vehicle must give the motor dealer or 29

[s 112]

a person apparently working for the motor dealer at the motor dealer's place of business a written notice indicating that the buyer terminates the contract. 1
2
3

(2) The notice must be given before the cooling-off period ends. 4

(3) Subsection (1) does not limit the *Acts Interpretation Act 1954*, part 10. 5
6

112 What happens when contract avoided 7

(1) Notice given under section 111 brings the contract, and any related contract, to an end. 8
9

(2) If the motor dealer to whom notice is given has given an option to purchase the motor vehicle to an option holder under section 103, the motor dealer must immediately advise the option holder that— 10
11
12
13

(a) the prior contract has been avoided; and 14

(b) a contract to purchase the vehicle must be entered into before the end of the motor dealer's next business day or any non-refundable deposit is forfeited. 15
16
17

(3) In this section— 18

related contract includes— 19

(a) a contract about the provision of finance to purchase the vehicle; and 20
21

(b) a contract of insurance for the vehicle. 22

113 Consideration for used motor vehicle during cooling-off period 23 24

(1) A motor dealer may accept a trade-in or other consideration from a buyer of a used motor vehicle before the end of the cooling-off period. 25
26
27

(2) However, the motor dealer must not deal in the trade-in or other consideration during the cooling-off period. 28
29

[s 114]

Maximum penalty—200 penalty units or 1 year’s imprisonment. 1
2

- (3) The motor dealer must return the trade-in or other consideration immediately to the buyer, at no cost to the buyer, if the buyer avoids the contract under section 111. 3
4
5

Maximum penalty—200 penalty units or 1 year’s imprisonment. 6
7

- (4) Subsection (3) does not require the return to the buyer of any non-refundable deposit paid as consideration for the cooling-off period. 8
9
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Note— 11

A person may make a claim, under the Administration Act, against the fund if the person suffers financial loss because of a contravention of this section. 12
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14

Division 7 Dealing with warranted and unwarranted vehicles 15 16

114 Definition for div 7 17

In this division— 18

motor dealer, for the sale of used motor vehicles, includes a person carrying on the business of a motor dealer without a licence. 19
20
21

115 Statutory warranty for warranted vehicles 22

Schedule 1 provides for a statutory warranty for warranted vehicles sold by a motor dealer in particular circumstances. 23
24

116 Unwarranted vehicles to be identified when offered for sale 25 26

- (1) A motor dealer may advertise or display for sale an unwarranted vehicle only if it is advertised or displayed for 27
28

sale, in the way provided under a regulation, as a vehicle that
does not have a statutory warranty.

Maximum penalty—100 penalty units.

- (2) This section does not apply to an unwarranted vehicle that is a
caravan, a commercial vehicle or a motorcycle.

Division 8 General

117 Motor dealer to keep transactions register

- (1) A motor dealer must keep, at each place the motor dealer
carries on business, a register of transactions (*transactions
register*).

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

- (2) The motor dealer must enter, and keep entered, in the
transactions register the particulars prescribed under a
regulation for each transaction entered into in the course of
business within 24 hours after the transaction is completed.

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

- (3) The form of the register may be prescribed under a regulation.

- (4) If the register is kept in electronic form, the motor dealer is
taken to comply with subsection (1) if information in the
register can be accessed electronically and as hard copy from
the place of business.

- (5) In this section—

motor dealer—

(a) means a motor dealer who is a principal licensee or a
person in charge of a licensee's business at a place; but

(b) does not include a motor dealer whose licence is
conditioned to allow the dealer to perform only the
activity of negotiating, under a consultancy

[s 118]

arrangement, for a person who is not a motor dealer or
chattel auctioneer for the purchase of a motor vehicle for
the person. 1
2
3

transaction means any of the following— 4

- (a) a sale; 5
- (b) a purchase; 6
- (c) accepting a deposit; 7
- (d) giving an option to purchase; 8
- (e) accepting a trade-in; 9
- (f) accepting a motor vehicle for sale on consignment; 10
- (g) a transfer of a motor vehicle from 1 place of business to
another place of business. 11
12

118 Contract of sale 13

(1) A motor dealer must ensure that a contract for the sale of a
motor vehicle by the motor dealer— 14
15

- (a) is in writing; and 16
- (b) contains the particulars prescribed under a regulation in
the way prescribed under the regulation. 17
18

Maximum penalty—200 penalty units. 19

(2) The motor dealer must give 1 copy of the contract to each
other person signing the contract immediately after it is
signed. 20
21
22

Maximum penalty—200 penalty units. 23

(3) A contract for the sale of a motor vehicle by a motor dealer
that is not in writing is not enforceable against the buyer of the
motor vehicle. 24
25
26

Division 9	Particular offences	1
119	Acting as motor dealer	2
(1)	A person must not carry on the business of a motor dealer unless—	3 4
(a)	the person holds a motor dealer licence; and	5
(b)	the activities performed in the carrying on of business as a motor dealer are authorised under the person’s licence.	6 7
	Maximum penalty—400 penalty units or 2 years imprisonment.	8 9
(2)	Without limiting the ways a person may carry on the business of a motor dealer, a person <i>carries on business</i> as a motor dealer if the person—	10 11 12
(a)	advertises, notifies or states that the person carries on the business of motor dealing, either generally or for a single transaction; or	13 14 15
(b)	in any way holds out as being ready to carry on the business of motor dealing, either generally or for a single transaction.	16 17 18
(3)	This section does not apply to a person who carries on a business that is primarily concerned with the hiring out or leasing of motor vehicles.	19 20 21
120	Motor dealer must not act for more than 1 party	22
(1)	A motor dealer must not act for more than 1 party to a transaction.	23 24
	Maximum penalty—200 penalty units.	25
(2)	If the motor dealer 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.	26 27 28

[s 121]

121	Employment of persons in motor dealer business	1
(1)	A motor dealer must not employ, as a motor salesperson, a person the motor dealer knows, or ought to know, does not hold a registration certificate as a motor salesperson.	2 3 4
	Maximum penalty—200 penalty units.	5
(2)	A principal licensee who is an individual and carries on the business of a motor dealer must not employ, as a motor salesperson for the business, himself or herself or another individual with whom the principal licensee carries on business as a motor dealer.	6 7 8 9 10
	Maximum penalty—200 penalty units.	11
(3)	A principal licensee that is a corporation and carries on business as a motor dealer must not employ an executive officer of the corporation as a motor salesperson for the business.	12 13 14 15
	Maximum penalty—	16
(a)	for an individual guilty under the Criminal Code, chapter 2 of an offence—200 penalty units; or	17 18
(b)	for a corporation—1000 penalty units.	19
Part 4	Chattel auctioneers	20
Division 1	Chattel auctioneers' authorisation	21
122	What a chattel auctioneer licence authorises	22
(1)	A chattel auctioneer licence authorises the holder of the licence (a <i>chattel auctioneer</i>) to perform the activity of selling goods by auction.	23 24 25

-
- (2) A chattel auctioneer licence also authorises the chattel auctioneer to sell the goods by any means during the auction period. 1
2
3
- (3) A chattel auctioneer may perform the activity— 4
- (a) in the carrying on of a business, either alone or with others; or 5
6
- (b) as an employee of— 7
- (i) a chattel auctioneer; or 8
- (ii) a motor dealer. 9
- (4) In this section— 10
- auction period*, for a chattel auctioneer for the sale of goods, 11
means a period for which the chattel auctioneer is appointed 12
under a chattel auctioneer appointment or otherwise 13
authorised or permitted under this or another Act to sell the 14
goods. 15

Division 2 Carrying on business 16

123 Carrying on of business under chattel auctioneer licence 17

An individual who carries on the business of a chattel auctioneer with others is not required to hold a chattel auctioneer licence if— 18
19
20

- (a) at least 1 of the persons with whom the individual carries on business is a chattel auctioneer; and 21
22
- (b) the individual does not perform the activity of a chattel auctioneer; and 23
24
- (c) the individual is a suitable person to hold a licence. 25

124 Licensee to be in charge of chattel auctioneer's business at a place 26 27

- (1) A chattel auctioneer who is an individual and a principal licensee must— 28
29

[s 124]

- (a) be in charge of the chattel auctioneer’s business at the chattel auctioneer’s registered office; and 1
2
- (b) if the chattel auctioneer has more than 1 place of business, ensure that at each other place of business an individual who is a chattel auctioneer is in charge of the chattel auctioneer’s business at the place. 3
4
5
6
- Maximum penalty—200 penalty units. 7
- (2) A chattel auctioneer that is a corporation and a principal licensee (*corporate chattel auctioneer*) must ensure that— 8
9
- (a) the individual in charge of the corporate chattel auctioneer’s business at its registered office is a chattel auctioneer; and 10
11
12
- (b) if the corporate chattel auctioneer has more than 1 place of business, at each other place of business an individual who is a chattel auctioneer is in charge of the corporate chattel auctioneer’s business at the place. 13
14
15
16
- Maximum penalty— 17
- (a) for an individual guilty under the Criminal Code, chapter 2 of an offence—200 penalty units; or 18
19
- (b) for a corporation—1000 penalty units. 20
- (3) An individual must not be in charge of a chattel auctioneer’s business at more than 1 place of business. 21
22
- Maximum penalty—200 penalty units. 23
- (4) It is not an offence against this section for a chattel auctioneer who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located. 24
25
26
27
- (5) For subsection (4), land is *contiguous* with other land only if the parcels of land have a common boundary that is not separated by a public road. 28
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Division 3	Appointment	1
Subdivision 1	Requirements	2
125	Appointment of chattel auctioneer	3
(1)	A chattel auctioneer who is asked by a person (<i>client</i>) to perform an activity authorised under the chattel auctioneer’s licence must not act for the client unless—	4 5 6
(a)	the client first appoints the chattel auctioneer in writing under this subdivision (<i>chattel auctioneer appointment</i>); or	7 8 9
(b)	a previous chattel auctioneer appointment by the client is assigned to the chattel auctioneer under the terms of the appointment or under section 129 and the appointment is in force.	10 11 12 13
	Maximum penalty—200 penalty units.	14
(2)	However, subsection (1) does not apply if the activity to be performed is—	15 16
(a)	the sale of livestock; or	17
(b)	authorised under a motor dealer appointment.	18
(3)	A chattel auctioneer appointment may be for the performance of—	19 20
(a)	the sale of particular goods by auction and any other service associated with the auction (<i>single appointment</i>); or	21 22 23
(b)	a number of services from time to time while the appointment continues in force (<i>continuing appointment</i>).	24 25 26

[s 126]

126	Content of appointment	1
(1)	A chattel auctioneer appointment must state—	2
(a)	the relevant service to be performed by the chattel auctioneer and how it is to be performed; and	3 4
(b)	for a single appointment—the day set for the auction; and	5 6
(c)	for a continuing appointment—the times when, circumstances in which, or occasions on which the relevant service is to be performed; and	7 8 9
(d)	the fees, charges and any commission payable for the relevant service; and	10 11
(e)	the expenses the chattel auctioneer is authorised to incur in connection with the performance of the relevant service; and	12 13 14
(f)	the source and the estimated amount or value of any rebate, discount, commission or benefit that the chattel auctioneer may receive for any expenses the chattel auctioneer is authorised to incur in connection with the performance of the relevant service; and	15 16 17 18 19
(g)	any conditions, limitations or restrictions on the performance of the relevant service; and	20 21
(h)	when the fees, charges and any commission for the relevant service become payable; and	22 23
(i)	that the appointment may be revoked by either party 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.	24 25 26 27
(2)	If the relevant service includes the sale of goods for which the commission payable is expressed as a percentage of an estimated sale price, the appointment must state that the commission is worked out only on the actual sale price.	28 29 30 31
(3)	In this section—	32
	<i>expenses</i> includes advertising, marketing and travelling expenses.	33 34

relevant service means—

- (a) for a single appointment—the services to be performed under the appointment; or
- (b) for a continuing appointment—each of the services or categories of services to be performed at stated times, in stated circumstances or on stated occasions while the appointment is in force.

127 Form of appointment

- (1) A chattel auctioneer appointment must be in the approved form.
- (2) The approved form must include a prominent statement that the client should seek independent legal advice before signing the appointment.
- (3) An appointment that does not comply with subsection (1) is ineffective from the time it is made.

128 Giving signed appointment to client

- (1) A chattel auctioneer appointment must be signed and dated by the client and the chattel auctioneer or someone authorised or apparently authorised to sign for the chattel auctioneer.
- (2) The chattel auctioneer must give a copy of the signed appointment to the client immediately after it is signed.
Maximum penalty for subsection (2)—200 penalty units.

Subdivision 2 Assignment

129 Proposal for assignment of appointments

- (1) This section applies if a chattel auctioneer who holds a chattel auctioneer appointment from a client proposes to assign the appointment to another chattel auctioneer (*proposed assignee*) without changing the terms of the appointment.

[s 130]

- (2) However, this section does not apply to the assignment of a chattel auctioneer appointment if—
- (a) the terms of the appointment authorise the assignment of the appointment; and
 - (b) the assignment is made under the terms of the appointment.
- (3) At least 14 days before the chattel auctioneer assigns the appointment, the chattel auctioneer must give the client written notice of the proposed assignment.
- (4) The notice must state the following—
- (a) the proposed assignee’s name;
 - (b) that the appointment is to be assigned without changing its terms;
 - (c) the client may agree or refuse to agree to the proposed assignment;
 - (d) when the proposed assignment is to take effect.
- (5) If the client agrees to the assignment and the chattel auctioneer assigns the appointment under this section, the appointment is taken, for section 125, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

Division 4 Particular conduct provisions 22

Subdivision 1 Auctions of goods 23

130 Buyer’s premium 24

- (1) This section applies to an auction of goods. 25
- (2) A chattel auctioneer must not charge the buyer of goods a buyer’s premium unless— 26
- (a) the chattel auctioneer— 28

[s 131]

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- (i) before the auction, obtains the written consent of the owner of the goods; and
- (ii) discloses, in the way prescribed under a regulation, that a buyer's premium is payable on the purchase of the goods; and
- (b) the premium is not more than the amount prescribed or worked out under a regulation.
- Maximum penalty—200 penalty units.
- (3) The chattel auctioneer does not act for the buyer of the goods only because the chattel auctioneer accepts a buyer's premium from the buyer.
- (4) In this section—
- buyer's premium* means an amount payable to the chattel auctioneer by a buyer on the purchase of goods.
- owner*, of goods, includes a person who is lawfully entitled to sell the goods.

Subdivision 2 Recovery of reward or expense

131 Commission may be claimed only for actual amounts

- (1) This section applies to a chattel auctioneer who performs, for the payment of a commission, a service of selling goods.
- (2) The chattel auctioneer must not claim commission worked out on an amount that is more than the actual sale price of the goods.
- Maximum penalty—200 penalty units.

132 Restriction on remedy for reward or expense

- (1) A person is not entitled to sue for, or recover or keep, a reward or expense for the performance of an activity as a chattel auctioneer unless, at the time the activity was performed, the person—

[s 133]

- (a) held a chattel auctioneer licence; and 1
 - (b) was authorised under the person’s licence to perform the activity; and 2
3
 - (c) had been properly appointed under division 3 by the person to be charged with the reward or expense. 4
5
- (2) A person who sues for, or recovers or keeps, a reward or expense for the performance of an activity as a chattel auctioneer other than as provided by subsection (1) commits an offence. 6
7
8
9
- Maximum penalty for subsection (2)—200 penalty units. 10

133 Restriction on recovery of reward or expense above amount allowed 11
12

- (1) A person is not entitled to sue for, or recover or keep, a reward for the performance of an activity as a chattel auctioneer that is more than the amount of the reward stated in the appointment given under section 125. 13
14
15
16
- (2) However, if the reward for the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or keep, a reward more than the amount allowed under the regulation. 17
18
19
20
- (3) A person is not entitled to sue for, or recover or keep, expenses for the performance of an activity as a chattel auctioneer that are more than the amount of the expenses stated in the appointment given to the person under section 125 and actually expended. 21
22
23
24
25
- (4) However, if the amount of expenses that may be incurred for the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or keep, an amount more than the amount allowed under the regulation. 26
27
28
29
- (5) Subsection (2) does not prevent the person suing for, recovering or keeping, in addition to the amount allowed under a regulation for the reward, an amount for GST payable for a supply. 30
31
32
33

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- (6) A person who sues for, or recovers or keeps, a reward or expense for the performance of an activity as a chattel auctioneer other than as provided by this section commits an offence. 1
2
3
4
Maximum penalty for subsection (6)—200 penalty units. 5
- (7) In this section— 6
actually expended, for expenses, means the amount actually expended after deducting— 7
8
- (a) the amount of any benefit, received or receivable, directly or indirectly, in connection with the expenses by the person seeking to sue for, recover or keep the expenses; or 9
10
11
12
- (b) if the benefit has no fixed amount—the market value of the benefit. 13
14

134 Excess commission etc. to be repaid 15

- (1) This section applies if— 16
- (a) a person is convicted of an offence against section 131(2), 132(2) or 133(6); and 17
18
- (b) 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 someone (*client*) for whom the person performed an activity an amount to which the person was not entitled. 19
20
21
22
23
- (2) The court must order the person to pay the amount to the client. 24
25
- (3) The order must be made whether or not any penalty is imposed on the conviction. 26
27
- (4) 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. 28
29
30

[s 135]

Subdivision 3	Interests in goods	1
135	Definition for sdiv 3	2
	In this subdivision—	3
	<i>obtain</i> includes being in any way concerned in obtaining.	4
136	Beneficial interest—options	5
(1)	This section applies to goods placed by a person (<i>client</i>) with a chattel auctioneer for sale.	6 7
(2)	The chattel auctioneer commits an offence if the chattel auctioneer obtains from the client an option to purchase the goods in which the chattel auctioneer has a beneficial interest.	8 9 10
	Maximum penalty—200 penalty units or 3 years imprisonment.	11 12
(3)	A chattel auctioneer must not sell goods if the chattel auctioneer obtains a beneficial interest in an option to purchase the goods.	13 14 15
	Maximum penalty—200 penalty units or 3 years imprisonment.	16 17
	<i>Note—</i>	18
	A person may make a claim, under the Administration Act, against the fund if the person suffers financial loss because of a contravention of this section.	19 20 21
137	Beneficial interest—other than options	22
(1)	This section applies to goods placed by a person (<i>client</i>) with a chattel auctioneer for sale, but does not apply if section 136 applies.	23 24 25
(2)	The chattel auctioneer commits an offence if the chattel auctioneer obtains a beneficial interest in the goods.	26 27
	Maximum penalty—200 penalty units or 3 years imprisonment.	28 29

-
- (3) A person does not contravene subsection (2) if— 1
- (a) the person— 2
- (i) before the earlier of the auction of the goods or a 3
contract for the sale of the goods is entered into, 4
obtains the client's written acknowledgement in 5
the approved form that the client— 6
- (A) is aware that the person is interested in 7
obtaining a beneficial interest in the goods; 8
and 9
- (B) consents to the person obtaining the interest; 10
and 11
- (ii) acts fairly and honestly in relation to the sale; and 12
- (b) no commission or other reward is payable for the sale; 13
and 14
- (c) the client is in substantially as good a position as the 15
client would be if the goods were sold at fair market 16
value. 17
- (4) If the chattel auctioneer has not obtained the 18
acknowledgement mentioned in subsection (3)(a)(i) and 19
knows, or ought to know, that an associate of the chattel 20
auctioneer intends bidding at the auction, the chattel 21
auctioneer must, immediately before the auction— 22
- (a) identify the associate to those present at the auction; and 23
- (b) announce to those present that the person is an associate 24
of the chattel auctioneer and intends bidding at the 25
auction. 26
- (5) If the chattel auctioneer complies with subsection (4), the 27
chattel auctioneer is taken to have satisfied subsection 28
(3)(a)(i). 29
- Note—* 30
- A person may make a claim, under the Administration Act, against the 31
fund if the person suffers financial loss because of a contravention of 32
this section. 33

[s 138]

138	Return of beneficial interest if in form of commission	1
(1)	This section applies if—	2
(a)	a person is convicted of an offence against section 137(2); and	3 4
(b)	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 someone (<i>client</i>) for whom the person performed an activity an amount of commission to which the person was not entitled.	5 6 7 8 9 10
(2)	The court must order the person to pay the amount to the client.	11 12
(3)	The order must be made whether or not any penalty is imposed on the conviction.	13 14
(4)	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.	15 16 17
139	Non-application of s 137 for particular livestock sales	18
	Section 137 does not apply to livestock sales if the chattel auctioneer obtains the client's written acknowledgement that the client—	19 20 21
(a)	is aware that the chattel auctioneer is interested in obtaining a beneficial interest in the livestock; and	22 23
(b)	consents to the chattel auctioneer obtaining the interest.	24
Subdivision 4	Prescribed conduct provisions	25
140	Prescribed conduct provisions	26
(1)	A regulation may provide for conduct standards for chattel auctioneers in carrying on chattel auctioneering practice.	27 28

- (2) A provision mentioned in subsection (1) is a ***prescribed conduct provision***. 1
2

Note— 3

A contravention of a prescribed conduct provision is grounds for 4
starting disciplinary proceedings. See section 194(1)(b)(ii). 5

Subdivision 5 Sales of written-off vehicles 6

141 Announcements before auction—written-off vehicle 7

- (1) A chattel auctioneer must announce, immediately before the 8
auction of a motor vehicle that is an unregistered written-off 9
vehicle, that the vehicle is a written-off vehicle and state— 10

(a) if the vehicle is a repairable write-off—that the vehicle 11
is a repairable write-off and must pass a written-off 12
vehicle inspection under a regulation under the 13
Transport Operations (Road Use Management) Act 14
1995 before it can be registered; or 15

(b) if the vehicle is a statutory write-off—that the vehicle 16
can not be registered. 17

Maximum penalty—100 penalty units. 18

- (2) A chattel auctioneer does not contravene subsection (1) if— 19

(a) 2 or more written-off vehicles that are repairable 20
write-offs are to be auctioned in consecutive lots; and 21

(b) immediately before the first vehicle is to be auctioned, 22
the chattel auctioneer— 23

(i) identifies the vehicles; and 24

(ii) announces that the identified vehicles are 25
repairable write-offs and must pass a written-off 26
vehicle inspection under a regulation under the 27
Transport Operations (Road Use Management) Act 28
1995 before they can be registered. 29

[s 142]

Division 5	Sale of motor vehicles by auction	1
142	Obligation to give clear title	2
(1)	This section applies if a used motor vehicle is to be sold by a chattel auctioneer (the <i>selling agent</i>) at auction to someone else (the <i>buyer</i>).	3 4 5
(2)	The following person (the <i>responsible licensee</i>) must ensure the buyer has clear title to the motor vehicle at the time property in the vehicle passes to the buyer—	6 7 8
(a)	if the selling agent owns the vehicle or is auctioning the vehicle for someone other than a motor dealer or another chattel auctioneer—the selling agent;	9 10 11
(b)	if the selling agent is auctioning the vehicle for a motor dealer or another chattel auctioneer—the motor dealer or other chattel auctioneer for whom the selling agent is auctioning the vehicle.	12 13 14 15
	Maximum penalty—200 penalty units.	16
	<i>Note—</i>	17
	A person may make a claim, under the Administration Act, against the fund if the person suffers financial loss because of a contravention of this subsection.	18 19 20
(3)	In a proceeding for an offence against subsection (2), it is a defence for the defendant to prove that the defendant took all reasonable steps to ensure subsection (2) was complied with.	21 22 23
(4)	A proceeding against a chattel auctioneer or motor dealer for an offence against this section does not affect any civil liability of any person, including the chattel auctioneer or dealer, arising out of the same facts that constitute the offence.	24 25 26 27
(5)	Subsection (2) does not apply to the extent that a security interest in the motor vehicle is registered under the <i>Personal Property Securities Act 2009</i> (Cwlth).	28 29 30

143	Contract must contain statement of guarantee of clear title	1 2
(1)	A contract for the sale of a used motor vehicle by a selling agent must state that the responsible licensee guarantees that the buyer will have clear title to the vehicle when property in the vehicle passes to the buyer.	3 4 5 6
(2)	If the contract does not comply with subsection (1), the buyer, by written notice given to the selling agent may avoid the contract.	7 8 9
(3)	The notice must be given to the selling agent within 7 days after the day property in the vehicle passes to the buyer.	10 11
Division 6	Dealing with warranted and unwarranted vehicles	12 13
144	Definition for div 6	14
	In this division—	15
	<i>chattel auctioneer</i> includes a person performing the activities of a chattel auctioneer without a licence.	16 17
145	Statutory warranty for warranted vehicles	18
	Schedule 1 provides for a statutory warranty for warranted vehicles sold by a chattel auctioneer in particular circumstances.	19 20 21
146	Unwarranted vehicles to be identified when offered for sale	22 23
(1)	A chattel auctioneer may advertise or display for sale an unwarranted vehicle only if it is advertised or displayed for sale, in the way provided under a regulation, as a vehicle that does not have a statutory warranty.	24 25 26 27
	Maximum penalty—100 penalty units.	28

[s 147]

(2)	This section does not apply to an unwarranted vehicle that is a caravan, a commercial vehicle or a motorcycle.	1 2
147	Announcements before auction	3
(1)	A chattel auctioneer must announce, immediately before the auction of any unwarranted vehicle, that the vehicle does not have a statutory warranty.	4 5 6
	Maximum penalty—100 penalty units.	7
(2)	A chattel auctioneer does not contravene subsection (1) if—	8
(a)	2 or more vehicles that do not have a statutory warranty are to be auctioned in consecutive lots; and	9 10
(b)	immediately before the first vehicle is to be auctioned, the chattel auctioneer identifies the vehicles and announces that the identified vehicles do not have a statutory warranty.	11 12 13 14
	<i>Example—</i>	15
	Lots 10 to 25 are vehicles that do not have a statutory warranty. The chattel auctioneer does not contravene subsection (1) if, immediately before the auction of lot 10, the chattel auctioneer announces lots 10 to 25 are vehicles that do not have a statutory warranty.	16 17 18 19 20
Division 7	General	21
148	Licensee’s disclosures to persons taking part in auction	22
	A chattel auctioneer who conducts an auction must disclose the following information, in the way and for the period prescribed under a regulation, to persons taking part in the auction—	23 24 25 26
(a)	the chattel auctioneer’s name;	27
(b)	any other particulars prescribed under a regulation.	28
	Maximum penalty—100 penalty units.	29

Division 8	Particular offences	1
149	Acting as chattel auctioneer	2
(1)	A person must not perform an activity that may be done under the authority of a chattel auctioneer licence unless the person—	3 4 5
(a)	holds a chattel auctioneer licence and the performance of the activity is authorised under the person’s licence;	6 7
	or	8
(b)	is otherwise permitted under this or another Act to perform the activity.	9 10
	Maximum penalty—200 penalty units or 2 years imprisonment.	11 12
(2)	A person must not act as a chattel auctioneer unless—	13
(a)	the person holds a chattel auctioneer licence and the act is done under the authority of the person’s licence; or	14 15
(b)	the act is otherwise permitted under this or another Act.	16
	Maximum penalty—200 penalty units or 2 years imprisonment.	17 18
(3)	Without limiting the ways a person may act as a chattel auctioneer, a person <i>acts</i> as a chattel auctioneer if the person—	19 20 21
(a)	performs an auction for the sale of goods; or	22
(b)	advertises, notifies or states that the person performs auctions or is willing to perform auctions for the sale of goods; or	23 24 25
(c)	in any way holds out as being ready to perform auctions for the sale of goods.	26 27
150	Chattel auctioneer must not act for more than 1 party	28
(1)	A chattel auctioneer must not act for more than 1 party to a transaction.	29 30

[s 151]

Maximum penalty—200 penalty units.	1
(2) If a chattel auctioneer 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.	2 3 4
(3) If the transaction is a livestock sale—	5
(a) a chattel auctioneer does not contravene subsection (1); and	6 7
(b) subsection (2) does not apply.	8
Part 5	
Registration of motor salespersons	9 10
Division 1	
Categories of registration	11
151	
Categories of registration certificate	12
(1) The chief executive may issue the following categories of registration certificate under this Act—	13 14
(a) a registration certificate (<i>general registration certificate</i>) that authorises the performance of all the activities that may be performed under section 152 by the holder of the registration certificate;	15 16 17 18
(b) a registration certificate (<i>limited registration certificate</i>), prescribed under a regulation, that limits the activities that may otherwise be performed under a general registration certificate.	19 20 21 22
(2) To be eligible for a limited registration certificate, an applicant for the certificate must have the educational or other qualifications approved by the chief executive for obtaining the certificate.	23 24 25 26

Editor's note—

The qualifications are stated on the department's website.

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Division 2 Motor salespersons' authorisation

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152 What a registration certificate authorises

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- (1) A registration certificate held by a motor salesperson authorises the motor salesperson to perform any activity that may be performed by the motor dealer who employs the motor salesperson.
- (2) However, a registration certificate does not authorise the holder to perform an activity that the holder is not authorised to perform because of a condition to which the certificate is subject.

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Division 3 How to obtain registration

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153 Steps involved in obtaining registration

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- (1) A person who wishes to obtain registration as a motor salesperson must be a suitable person to hold registration under division 5.
- (2) The person must apply for registration by—
 - (a) giving the chief executive an application showing, among other things, the person is eligible to obtain registration; and
 - (b) paying the prescribed fees.
- (3) In deciding the application, the chief executive must have regard, among other things, to—
 - (a) the person's suitability to hold a registration certificate; and
 - (b) the person's eligibility to hold the registration certificate.

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[s 154]

Division 4	Applications for registration	1
154	Application for registration	2
(1)	An applicant for registration as a motor salesperson must—	3
(a)	be an individual; and	4
(b)	apply to the chief executive in the approved form; and	5
(c)	state the category of the registration being applied for; and	6 7
(d)	state the term of the registration being applied for; and	8
(e)	establish the applicant’s suitability and eligibility for registration as a motor salesperson; and	9 10
(f)	provide any information the chief executive reasonably requires to decide whether the applicant is suitable and eligible to be a motor salesperson.	11 12 13
(2)	The application must be accompanied by—	14
(a)	the application fee prescribed under a regulation; and	15
(b)	the registration issue fee prescribed under a regulation; and	16 17
(c)	if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid.	18 19 20
155	Particular persons can not make application	21
(1)	A person who is a disqualified person can not make an application for a registration certificate during the period for which the person is disqualified.	22 23 24
(2)	If a person applies for a registration certificate and the chief executive decides to refuse to issue the registration certificate, the person can not make another application for a registration certificate—	25 26 27 28
(a)	for 3 months after the day the chief executive gives the person the information notice about the decision; or	29 30

(b)	if the person applies to QCAT to review the decision and the decision is confirmed—for 3 months after the day the decision is confirmed.	1 2 3
(3)	In this section—	4
	<i>disqualified person</i> means a person who, as a consequence of an order made by QCAT under section 199 or by a court under section 229, is disqualified from holding a registration certificate.	5 6 7 8
156	Requirement to give chief executive information or material about application	9 10
(1)	This section applies to an applicant for—	11
(a)	a registration certificate; or	12
(b)	renewal of a registration certificate; or	13
(c)	restoration of a registration certificate.	14
(2)	The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to consider the application.	15 16 17 18 19
	<i>Example of information or material—</i>	20
	information or material the chief executive reasonably considers is needed to establish the applicant’s suitability for the registration certificate	21 22 23
(3)	The applicant is taken to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive’s requirement.	24 25 26
Division 5	Suitability of applicants	27
157	Suitability of applicants	28
(1)	A person is not a suitable person to hold a registration certificate if the person is—	29 30

[s 158]

- (a) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or 1
2
3
 - (b) currently disqualified from holding a licence or registration certificate; or 4
5
 - (c) a person the chief executive decides under section 158 is not a suitable person to hold a registration certificate; or 6
7
 - (d) an identified participant in a criminal organisation. 8
- (2) An individual who is not a suitable person can not obtain registration as a motor salesperson. 9
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158 Chief executive must consider suitability of applicants 11

- (1) The chief executive must, when deciding whether a person is a suitable person to hold a registration certificate, consider each of the following things— 12
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- (a) the person’s character; 15
 - (b) whether the person held a licence or registration certificate under a relevant Act that was suspended or cancelled under the relevant Act; 16
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 - (c) whether an amount has been paid from the fund because the person did, or omitted to do, something that gave rise to the claim against the fund; 19
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 - (d) whether the person has been disqualified under a relevant Act from being the holder of a licence or registration certificate within the meaning of the relevant Act; 22
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 - (e) whether, within the previous 5 years, QCAT, the former tribunal or the District Court has made an order under this Act or PAMDA adverse to the person; 26
27
28
 - (f) the person’s criminal history; 29
 - (g) if the person is an insolvent under administration— 30
 - (i) the circumstances giving rise to the person being an insolvent under administration; and 31
32

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- (ii) whether the person took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the person being an insolvent under administration; and
- (iii) whether the person is in a position to influence significantly the management of a motor dealer's business;
- (h) whether the person has been convicted of an offence against a relevant Act or the Administration Act;
- (i) whether the person is an identified participant in a criminal organisation;
- (j) whether the person is capable of satisfactorily performing the activities of a motor salesperson;
- (k) whether the person's name appears in the register of persons disqualified from managing corporations under the Corporations Act;
- Note—*
- See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers).
- (l) another thing the chief executive may consider under this Act.
- (2) If the chief executive decides a person is not a suitable person to hold a registration certificate, the chief executive must give the person an information notice about the decision within 14 days after making the decision.
- (3) The *Acts Interpretation Act 1954*, section 27B, does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner to the chief executive under section 163(2).
- (4) In this section—
- fund** includes the claim fund under PAMDA.
- relevant Act** means this Act, an Agents Act, PAMDA or a corresponding law.

[s 159]

159	Investigations about suitability of applicants	1
(1)	The chief executive may make investigations about an applicant mentioned in section 156(1) or a motor salesperson to help the chief executive decide whether the applicant or motor salesperson is a suitable person to hold a registration certificate.	2 3 4 5 6
(2)	Without limiting subsection (1), the chief executive may ask the commissioner for a criminal history report about the applicant or motor salesperson.	7 8 9
(3)	The commissioner must give the report to the chief executive.	10
(4)	However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.	11 12 13
(5)	If the person's criminal history includes a conviction recorded against the person, the report must be written.	14 15
160	Notice of change in criminal history	16
(1)	This section applies if the commissioner reasonably suspects the criminal history of the holder of a registration certificate has changed.	17 18 19
(2)	The commissioner may notify the chief executive the person's criminal history has changed.	20 21
(3)	The notice must state the following—	22
(a)	the person's name and any other name the commissioner believes the person may use or may have used;	23 24
(b)	the person's date and place of birth;	25
(c)	a brief description of the nature of the offence giving rise to the conviction or charge to which the change relates.	26 27 28
(4)	The chief executive may confirm the commissioner's suspicions under subsection (1).	29 30

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

161 Costs of criminal history report

- (1) The chief executive may require an applicant mentioned in section 156(1) or a motor salesperson to pay the reasonable, but no more than actual, costs of obtaining a criminal history report under section 159 for the applicant or motor salesperson.
- (2) The requirement is a *criminal history costs requirement*.
- (3) The chief executive may notify the applicant or motor salesperson of the requirement to pay a criminal history costs requirement—
- (a) in the approved form; or
 - (b) on the department's website; or
 - (c) in a written notice given by the chief executive to the applicant or motor salesperson.
- (4) If the criminal history costs requirement is made in a written notice given by the chief executive to the applicant or motor salesperson, the notice must include a requirement for the costs to be paid within a stated reasonable period.
- (5) The applicant or motor salesperson is taken to have withdrawn the application for which the criminal history report was requested if, within the stated reasonable period, the applicant or motor salesperson fails to comply with the chief executive's requirement to pay the criminal history costs requirement.
- (6) The chief executive must refund to the applicant an amount paid under the requirement if—

[s 162]

- (a) the chief executive refuses the application without asking for the report; or 1
2
- (b) the applicant or motor salesperson withdraws the application before the chief executive asks for the report. 3
4
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- (7) In this section— 6
applicant includes proposed applicant. 7
- 162 Use of information obtained under s 159 or s 160** 8
- (1) Subsection (2) applies to the chief executive in considering information about a person obtained under section 159 or 160. 9
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- (2) Information about a conviction of the person may be used only for making a decision as to whether the person is, or continues to be, a suitable person to hold a registration certificate. 11
12
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- (3) Subsection (4) applies to the chief executive in considering information about a person obtained under section 160. 15
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- (4) Information about a charge against the person 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. 17
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- 163 Requesting and using information from commissioner—identified participant** 21
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- (1) The chief executive must ask the commissioner whether an applicant mentioned in section 156(1) or a motor salesperson is an identified participant in a criminal organisation. 23
24
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- (2) The commissioner must comply with the chief executive's request. 26
27
- (3) The chief executive may use the advice given by the commissioner only for deciding whether the applicant or motor salesperson is, or continues to be, a suitable person to hold a registration certificate. 28
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- 164 Confidentiality of criminal history** 1
- (1) A public service employee performing functions under this 2
Act must not, directly or indirectly, disclose to anyone else 3
any of the following (the *relevant information*)— 4
- (a) a criminal history report or information contained in the 5
report; 6
- (b) any of the contents of a notice given under section 7
160(2). 8
- Maximum penalty—100 penalty units. 9
- (2) However, the person does not contravene subsection (1) if— 10
- (a) disclosure of the relevant information to someone else is 11
authorised by the chief executive to the extent necessary 12
to perform a function under or relating to this Act; or 13
- (b) the disclosure is otherwise required or permitted by law. 14
- (3) The chief executive must destroy the following as soon as 15
practicable after considering a person’s suitability for 16
registration as a motor salesperson— 17
- (a) a criminal history report about the person; 18
- (b) a notice given under section 160(2) about the person. 19

Division 6 Eligibility for registration 20

165 Eligibility for registration as motor salesperson 21

- (1) An individual is eligible for registration as a motor 22
salesperson only if the individual— 23
- (a) is at least 18 years; and 24
- (b) has the educational or other qualifications approved by 25
the chief executive for the relevant category of 26
registration. 27

Editor’s note— 28

The qualifications are stated on the department’s website. 29

[s 166]

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| (2) | An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied— | 1
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| (a) | the individual has a comparable qualification to the qualifications mentioned in subsection (1)(b); or | 4
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| (b) | within 2 years before the day the individual's application for registration is received by the chief executive, the individual held— | 6
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| (i) | a registration certificate authorising the performance of activities at least equivalent to the activities that could be performed under the registration certificate being applied for, if it were issued; or | 9
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| (ii) | a registration certificate as a motor salesperson granted under PAMDA. | 14
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Division 7 Issue of registration certificate 16

166 Chief executive may issue or refuse to issue registration certificate 17
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|-----|--|----------------------|
| (1) | The chief executive may decide to issue or refuse to issue a registration certificate to an applicant. | 19
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| (2) | The chief executive may decide to issue a certificate to an applicant only if the chief executive is satisfied— | 21
22 |
| (a) | the applicant is a suitable person to obtain registration; and | 23
24 |
| (b) | the applicant is eligible to obtain registration; and | 25 |
| (c) | the application is made under section 154(2); and | 26 |
| (d) | any further information or material required by the chief executive under section 156 has been given within the reasonable period stated in the notice given under that section. | 27
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- (3) If the chief executive decides to refuse to issue the registration certificate, the chief executive must give the applicant an information notice about the decision within 14 days after making the decision. 1
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- (4) The *Acts Interpretation Act 1954*, section 27B, does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner to the chief executive under section 163(2). 5
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167 Registration certificate—conditions 9

- (1) The chief executive may decide to issue a registration certificate on the conditions the chief executive considers necessary or desirable— 10
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- (a) for the proper performance of the activities authorised by the certificate; or 13
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- (b) for another purpose consistent with the achievement of the objects of this Act or the Administration Act. 15
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Example— 17

If the chief executive decides to issue a registration certificate to a person who is or has been an insolvent under administration, the chief executive may issue the certificate subject to a condition that the person not receive, bank or otherwise be responsible for dealing with trust account moneys. 18
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- (2) A condition may limit or prohibit the performance of an activity authorised under this Act or the Administration Act. 23
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- (3) If the chief executive decides to issue the certificate on condition, the chief executive must give the applicant an information notice about the decision within 14 days after making the decision. 25
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[s 168]

Division 8	Renewal and restoration of registration certificates	1 2
Subdivision 1	Renewal	3
168	Application for renewal	4
(1)	A motor salesperson may only apply for renewal of the motor salesperson's registration certificate before the certificate expires.	5 6 7
(2)	The application must—	8
(a)	be made to the chief executive in the approved form; and	9
(b)	state the term of the registration being applied for; and	10
(c)	be accompanied by—	11
(i)	the application fee prescribed under a regulation; and	12 13
(ii)	the registration certificate renewal fee prescribed under a regulation; and	14 15
(iii)	if, before or when the application is made, a criminal history costs requirement is made of the motor salesperson—the amount of the costs required to be paid.	16 17 18 19
169	Chief executive may renew or refuse to renew registration certificate	20 21
(1)	The chief executive must consider the renewal application and decide to renew or refuse to renew the registration certificate.	22 23
(2)	The chief executive may decide to renew the certificate only if the chief executive is satisfied—	24 25
(a)	the motor salesperson is a suitable person to obtain the registration; and	26 27
(b)	the application is made under section 168(2); and	28

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- (c) the motor salesperson meets the eligibility requirements, other than eligibility requirements of an educational nature, for the certificate. 1
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- (3) If the chief executive decides to refuse to renew the registration certificate, the chief executive must give the employee an information notice about the decision within 14 days after making the decision. 4
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- (4) The *Acts Interpretation Act 1954*, section 27B, does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner to the chief executive under section 163(2). 8
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- 170 Registration certificate taken to be in force while application for renewal is considered** 12
13
- If an application is made under section 168, the motor salesperson's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the salesperson's application for renewal is— 14
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17
- (a) decided under section 169; or 18
- (b) withdrawn by the salesperson; or 19
- (c) taken to have been withdrawn under section 156(3). 20
- Subdivision 2 Restoration** 21
- 171 Application for restoration** 22
- (1) If a person's registration certificate expires, the person may apply for restoration of the certificate. 23
24
- (2) The application must— 25
- (a) be made to the chief executive in the approved form; and 26
- (b) be made within 3 months after the expiry; and 27
- (c) state the term of the registration being applied for; and 28
- (d) be accompanied by— 29

[s 172]

	(i) the application fee prescribed under a regulation; and	1 2
	(ii) the registration renewal fee prescribed under a regulation; and	3 4
	(iii) the registration restoration fee prescribed under a regulation; and	5 6
	(iv) if, before or when the application is made, a criminal history costs requirement is made of the person—the amount of the costs required to be paid.	7 8 9 10
172	Chief executive may restore or refuse to restore registration certificate	11 12
	(1) The chief executive must consider the application for restoration and decide to restore or refuse to restore the registration certificate.	13 14 15
	(2) The chief executive may decide to restore the certificate only if the chief executive is satisfied—	16 17
	(a) the person is a suitable person to obtain registration; and	18
	(b) the application is made under section 171(2); and	19
	(c) the person meets the eligibility requirements, other than eligibility requirements of an educational nature, for the certificate.	20 21 22
	(3) If the chief executive decides to refuse to restore the registration certificate, the chief executive must give the person an information notice about the decision within 14 days after making the decision.	23 24 25 26
	(4) The <i>Acts Interpretation Act 1954</i> , section 27B, does not apply to the information notice to the extent to which the decision is a result of advice given by the commissioner to the chief executive under section 163(2).	27 28 29 30

(5)	If the chief executive decides to restore the certificate—	1
(a)	the certificate is taken to have been renewed on the day it would, apart from section 170, have expired (the <i>initial expiry date</i>); and	2 3 4
(b)	to remove any doubt, it is declared that a thing done during the period starting on the initial expiry date and ending on the day the certificate is restored under this section is taken to have been as validly done as it would have been if the certificate had been renewed immediately before the initial expiry date.	5 6 7 8 9 10
173	Registration certificate taken to be in force while application for restoration is considered	11 12
	If an application is made under section 171, the person's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the application for restoration is—	13 14 15 16
(a)	decided under section 172; or	17
(b)	withdrawn by the person; or	18
(c)	taken to have been withdrawn under section 156(3).	19
Division 9	Dealings with registration certificates	20 21
Subdivision 1	Transfer of registration certificate	22
174	Transfer of registration certificate prohibited	23
	A registration certificate may not be transferred.	24

[s 175]

175	Offence to sell, lend or borrow registration certificate	1
(1)	A motor salesperson must not—	2
(a)	sell, lend or hire out the salesperson’s registration certificate to someone else; or	3 4
(b)	notify or advertise that a registration certificate is available for sale, loan or hire to another person, whether or not the other person is registered as a motor salesperson; or	5 6 7 8
(c)	permit or allow someone else to hold out that the person is the holder of the motor salesperson’s registration certificate.	9 10 11
	Maximum penalty—200 penalty units or 2 years imprisonment.	12 13
(2)	A person must not buy, borrow or hire a motor salesperson’s registration certificate.	14 15
	Maximum penalty—200 penalty units or 2 years imprisonment.	16 17
Subdivision 2	General	18
176	Amendment of registration certificate conditions	19
(1)	The chief executive may amend the conditions of a motor salesperson’s registration certificate—	20 21
(a)	on the motor salesperson’s application; or	22
(b)	on the order of QCAT after a disciplinary hearing; or	23
(c)	on the chief executive’s own initiative.	24
	<i>Note—</i>	25
	QCAT may deal with the conditions of a person’s registration certificate under section 199.	26 27
(2)	An application under subsection (1)(a) must be made to the chief executive in the approved form and be accompanied by the application fee prescribed under a regulation.	28 29 30

-
- (3) Before making an amendment under subsection (1)(a), the chief executive must be satisfied the motor salesperson meets the eligibility requirements the chief executive considers relevant to the amendment of the condition. 1
2
3
4
- (4) Before making an amendment under subsection (1)(c), the chief executive must— 5
6
- (a) give written notice to the motor salesperson— 7
- (i) of the particulars of the proposed amendment; and 8
- (ii) that the motor salesperson may make written submissions to the chief executive about the proposed amendment before a stated day not later than 14 days after the notice is given to the motor salesperson; and 9
10
11
12
13
- (b) have regard to submissions made to the chief executive by the motor salesperson before the stated day. 14
15
- (5) Subsection (4) does not apply if the chief executive decides that the amendment must be made urgently to ensure compliance with this Act or the Administration Act. 16
17
18
- (6) If the chief executive decides to amend the conditions of a registration certificate under subsection (1)(c), the chief executive must give the motor salesperson an information notice about the decision within 14 days after making the decision. 19
20
21
22
23
- (7) The amendment takes effect— 24
- (a) on the day the written notice of the amendment is given to the motor salesperson; or 25
26
- (b) if a later day is stated in the notice—on the stated day. 27
- (8) If the chief executive decides to refuse to make an amendment requested under subsection (1)(a), the chief executive must give the motor salesperson an information notice about the decision within 14 days after making the decision. 28
29
30
31

[s 177]

177	Return of registration certificate for amendment or replacement	1 2
(1)	The chief executive may require a motor salesperson to produce the salesperson's registration certificate for amendment or replacement within a stated period of not less than 14 days if the chief executive intends to—	3 4 5 6
(a)	amend the conditions of the certificate under section 176; or	7 8
(b)	replace the certificate under section 186(5).	9
(2)	The motor salesperson must comply with the requirement, unless the person has a reasonable excuse.	10 11
	Maximum penalty for subsection (2)—100 penalty units.	12
178	Return of registration certificate for suspension or cancellation	13 14
(1)	A person whose registration certificate has been suspended or cancelled under section 229(1) or an order made by QCAT must return the certificate to the chief executive within 14 days after the suspension or cancellation unless the person has a reasonable excuse.	15 16 17 18 19
	Maximum penalty—100 penalty units.	20
(2)	Subsection (1) does not apply if section 180(5), 181(2) or 182(5) applies.	21 22
179	Surrender of registration certificate	23
(1)	A motor salesperson may surrender the motor salesperson's registration certificate by giving written notice to the chief executive and returning the certificate.	24 25 26
(2)	A registration certificate surrendered under this section stops having effect on the day it is surrendered.	27 28

Division 10	Suspension and cancellation of registration certificates	1 2
180	Immediate suspension	3
(1)	This section applies if the chief executive believes, on reasonable grounds, that—	4 5
(a)	a motor salesperson’s registration certificate, or a renewal or restoration of the registration certificate, was obtained because of materially incorrect or misleading information; or	6 7 8 9
(b)	both—	10
(i)	an irregularity or deficiency exists in a motor dealer’s trust account; and	11 12
(ii)	a motor salesperson employed by the motor dealer may be responsible for the irregularity or deficiency; or	13 14 15
(c)	a motor salesperson—	16
(i)	has contravened or is contravening this Act or the Administration Act; or	17 18
(ii)	has contravened PAMDA; or	19
(iii)	is likely or proposing to engage in conduct that would contravene this Act or the Administration Act.	20 21 22
(2)	The chief executive may suspend the motor salesperson’s registration certificate, whether or not disciplinary proceedings have been started under this Act.	23 24 25
(3)	The certificate may be suspended for the period, of not more than 28 days, and on the conditions the chief executive decides.	26 27 28
(4)	The chief executive must give the motor salesperson an information notice about the decision to suspend the motor salesperson’s registration within 14 days after the suspension.	29 30 31

[s 181]

- (5) The motor salesperson must return the certificate to the chief executive within 14 days after the motor salesperson receives the notice, unless the motor salesperson has a reasonable excuse. 1
2
3
4
Maximum penalty for subsection (5)—100 penalty units. 5
- 181 Immediate cancellation** 6
- (1) A motor salesperson’s registration certificate is cancelled if the salesperson is convicted of a serious offence. 7
8
- (2) The motor salesperson must return the registration certificate to the chief executive within 14 days after the conviction, unless the salesperson has a reasonable excuse. 9
10
11
Maximum penalty for subsection (2)—100 penalty units. 12
- 182 Cancellation—identified participant** 13
- (1) The chief executive may cancel a motor salesperson’s registration certificate if the chief executive becomes aware the salesperson is an identified participant in a criminal organisation. 14
15
16
17
- (2) The chief executive must give the motor salesperson an information notice for the decision within 14 days after making the decision. 18
19
20
- (3) The *Acts Interpretation Act 1954*, section 27B, does not apply to the information notice. 21
22
- (4) The decision takes effect on the day the chief executive gives the information notice under subsection (2). 23
24
- (5) The motor salesperson must return the registration certificate to the chief executive within 14 days after the information notice is given, unless the salesperson has a reasonable excuse. 25
26
27
28
Maximum penalty for subsection (5)—100 penalty units. 29

Division 11	General provisions about employee registration	1 2
183	Form of registration certificate	3
(1)	A registration certificate must be in the approved form.	4
(2)	However, the chief executive may approve—	5
(a)	a form of certificate for office display purposes; and	6
	<i>Example—</i>	7
	a form of a certificate that may be framed and displayed in an office	8 9
(b)	a form of certificate for personal identification purposes.	10
(3)	The certificate must contain the following particulars—	11
(a)	the name of the motor salesperson;	12
(b)	the date of issue of the certificate;	13
(c)	the expiry date of the certificate;	14
(d)	other particulars prescribed under a regulation.	15
184	Requirement to keep copy of registration certificate available for inspection	16 17
	A motor salesperson must keep a copy of the salesperson's registration certificate available for inspection at each place of business where the salesperson is employed as a motor salesperson.	18 19 20 21
	Maximum penalty—100 penalty units.	22
185	Term of registration certificate	23
	A registration certificate may be issued for a 1 year or 3 year term.	24 25

[s 186]

186	Replacement certificates	1
(1)	A motor salesperson may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged registration certificate.	2 3 4
(2)	The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.	5 6
(3)	The chief executive must grant the application if the chief executive is satisfied the original certificate has been lost, stolen or destroyed, or damaged in a way to require its replacement.	7 8 9 10
(4)	If the chief executive grants the application made under subsection (1), the chief executive must issue another registration certificate to the applicant to replace the original certificate.	11 12 13 14
(5)	The chief executive may also replace a registration certificate if—	15 16
(a)	either—	17
(i)	the holder of the certificate has given written notice to the chief executive of a prescribed change; or	18 19
(ii)	the chief executive reasonably believes a prescribed change for the holder of the certificate has happened; and	20 21 22
(b)	the chief executive is satisfied the prescribed change requires a replacement of the certificate.	23 24
(6)	If the chief executive replaces a registration certificate under this section—	25 26
(a)	the certificate continues to be subject to the same conditions and term that the certificate was subject to before being replaced; and	27 28 29
(b)	the holder of the certificate must pay the chief executive the fee prescribed under a regulation.	30 31
(7)	In this section—	32

prescribed change means a prescribed change under section 188. 1
2

187 Register of registration certificates 3

- (1) The chief executive must keep a register of registration certificates and applications for registration certificates (the *registration certificate register*). 4
5
6
- (2) The registration certificate register may form part of the licence register. 7
8
- (3) The registration certificate register must contain the following particulars— 9
10
- (a) for each applicant for a registration certificate— 11
- (i) the applicant’s name; and 12
 - (ii) the date of the application; and 13
 - (iii) the application number; and 14
 - (iv) the category of the registration certificate being applied for; 15
16
- (b) for each motor salesperson— 17
- (i) the motor salesperson’s name; and 18
 - (ii) the dates of issue and expiry of the motor salesperson’s current registration certificate; and 19
20
 - (iii) the category of the registration certificate; and 21
 - (iv) any conditions imposed on the certificate; and 22
 - (v) the motor salesperson’s registration certificate number; and 23
24
 - (vi) particulars of any surrender, suspension or cancellation of the motor salesperson’s registration certificate. 25
26
27
- (4) A person may, on payment of the fee prescribed under a regulation, inspect or get a copy of details in the part of the register containing the particulars mentioned in subsection (3)— 28
29
30
31

[s 188]

(a)	at a place or places decided by the chief executive; or	1
(b)	by using a computer.	2
(5)	A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.	3 4
(6)	The register may be kept in any way the chief executive considers appropriate.	5 6
(7)	In this section— <i>contain</i> includes record and store.	7 8
188	Motor salespersons to notify chief executive of changes in circumstances	9 10
(1)	A motor salesperson must give written notice to the chief executive of a prescribed change in the motor salesperson's circumstances within 14 days after the change. Maximum penalty—100 penalty units.	11 12 13 14
(2)	In this section— <i>prescribed change</i> means a change prescribed under a regulation.	15 16 17
189	Production of registration certificate	18
	A motor salesperson must, if asked by a person with whom the salesperson is dealing, produce the salesperson's registration certificate for inspection by the person. Maximum penalty—100 penalty units.	19 20 21 22
190	Pretending to be motor salesperson	23
(1)	A person must not act as a motor salesperson unless the person holds a registration certificate as a motor salesperson. Maximum penalty—200 penalty units.	24 25 26
(2)	In this section—	27

act as a motor salesperson, for a person, includes hold out
that the person is a motor salesperson. 1
2

Part 6 Trust accounts 3

191 Keeping trust accounts 4

(1) A principal licensee must keep a trust account under the
Administration Act if an amount is likely to be received by the
licensee for a transaction, or with written direction for its use,
when performing the activities of a motor dealer or chattel
auctioneer. 5
6
7
8
9

Maximum penalty—200 penalty units or 2 years
imprisonment. 10
11

(2) However, subsection (1) does not apply to a del credere agent
for selling livestock under a del credere agreement while the
agreement is in force. 12
13
14

(3) In this section— 15

amount, likely to be received by a licensee for a transaction or
with written direction for its use— 16
17

(a) includes deposit and purchase monies for a transaction;
but 18
19

(b) 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. 20
21
22
23

del credere agreement means a written agreement between a
del credere agent and a livestock seller under which the agent
agrees to sell the livestock for the seller and guarantees
payment of the purchase price of the livestock to the seller. 24
25
26
27

[s 192]

Part 7	Proceedings	1
Division 1	QCAT proceedings	2
Subdivision 1	Preliminary	3
192	Definitions for div 1	4
	In this division—	5
	<i>licensee</i> includes a person who held a licence under this Act at any time within 3 years before a proceeding under this part is started involving the person.	6 7 8
	<i>motor salesperson</i> includes a person who was a motor salesperson at any time within 1 year before a proceeding under this part is started involving the person.	9 10 11
193	Jurisdiction	12
	For this Act, QCAT has the following jurisdiction—	13
	(a) to hear and decide disciplinary matters involving a licensee or a motor salesperson;	14 15
	(b) to review decisions of the chief executive relating to licensing and registration.	16 17
Subdivision 2	Disciplinary proceedings	18
194	Grounds for starting disciplinary proceedings	19
	(1) The following are grounds for starting a disciplinary proceeding against a licensee or motor salesperson—	20 21
	(a) the licensee or salesperson has been convicted of an indictable offence or an offence against this Act or the Administration Act;	22 23 24

-
- (b) the licensee or salesperson has contravened or breached—
- (i) this Act; or
 - (ii) a prescribed conduct provision; or
 - (iii) the Administration Act; or
 - (iv) an undertaking given under part 8, division 2; or
 - (v) a corresponding law;
- (c) the licensee or salesperson has been disqualified from holding an authorisation, similar to a licence or registration certificate, under a corresponding law;
- (d) an amount has been paid from the fund because the licensee or salesperson did, or omitted to do, something that gave rise to a claim against the fund;
- (e) the licensee or salesperson fraudulently or improperly obtained, or helped someone else to fraudulently or improperly obtain, a licence or registration certificate;
- (f) the licensee or salesperson has failed to comply with an order made by a court, the former tribunal or QCAT;
- (g) for a licensee—
- (i) the licensee is not a suitable person to hold a licence; or
 - (ii) the licensee has carried on, or is carrying on, business under a licence with someone who is not a suitable person to hold a licence; or
 - (iii) the licensee has, in carrying on a business or performing an activity, been incompetent or acted in an unprofessional way; or
 - (iv) the licensee has failed to ensure that the licensee’s employed licensees or motor salespersons, or employees under the licensee’s supervision—
 - (A) are properly supervised in the performance of their duties; or

[s 195]

- (B) comply with this Act; or 1
- (v) the licensee has failed to comply with a condition 2
of the licensee's licence; or 3
- (vi) the licensee is an executive officer of a corporation 4
against whom QCAT finds grounds exist to take 5
disciplinary action under section 199; or 6
- (vii) if the licensee is a corporation— 7
 - (A) an executive officer of the corporation is not 8
a suitable person to be an executive officer of 9
a corporation; or 10
 - (B) an executive officer of the corporation is 11
disqualified under this Act from being an 12
executive officer of a corporation; 13
- (h) for a motor salesperson— 14
 - (i) the salesperson is not eligible to be employed as a 15
motor salesperson; or 16
 - (ii) the salesperson has, in performing an activity of a 17
licensee, been incompetent or acted in an 18
unprofessional way. 19
- (2) The chief executive must not start a disciplinary proceeding 20
against an executive officer under subsection (1)(g)(vi) if the 21
chief executive is satisfied— 22
 - (a) the act or omission relevant to the proceeding against 23
the corporation was done or made without the executive 24
officer's knowledge; and 25
 - (b) the executive officer could not, with reasonable 26
diligence, have prevented the doing of the act or the 27
making of the omission. 28

195 Starting disciplinary proceedings 29

The chief executive may apply to QCAT to conduct a 30
proceeding to decide whether grounds exist under section 194 31
for taking disciplinary action against a licensee or motor 32
salesperson. 33

Subdivision 3	Review proceedings	1
196	Person dissatisfied with chief executive’s decision may seek review	2 3
	A person who is dissatisfied with a decision of the chief executive made under a provision mentioned in schedule 2 may apply to QCAT to have the decision reviewed.	4 5 6
197	Stay of operation of decisions	7
	(1) A decision of the chief executive, other than a decision made under section 61 or 180, being reviewed is stayed for the purpose of securing the effectiveness of the review.	8 9 10
	(2) However, the period of a stay does not extend past the time when QCAT decides the application.	11 12
198	QCAT may extend time	13
	(1) QCAT may extend the time within which to seek review of a decision of the chief executive if it is satisfied—	14 15
	(a) the application is made within 42 days after the person receives notice of the decision to be reviewed; and	16 17
	(b) it is appropriate to extend time having regard to—	18
	(i) the application generally; and	19
	(ii) the justice of the matter generally.	20
	(2) No appeal lies against QCAT’s decision under this section.	21
Subdivision 4	QCAT’s orders	22
199	Orders QCAT may make on disciplinary hearing	23
	(1) QCAT may make 1 or more of the following orders against a person in relation to whom QCAT finds grounds exist to take disciplinary action under this Act—	24 25 26

[s 199]

- | | | |
|-----|--|----------------------------|
| (a) | an order reprimanding the person; | 1 |
| (b) | an order that the person pay to the State, within the period stated in the order, a fine of not more than— | 2
3 |
| | (i) for an individual—200 penalty units; or | 4 |
| | (ii) for a corporation—1000 penalty units; | 5 |
| (c) | an order that the person pay compensation (inclusive of any commission to which the person is not entitled) to someone else who has suffered loss or damage because of the act or omission that resulted in the finding; | 6
7
8
9 |
| (d) | an order that the person's licence or registration certificate be suspended for the period stated in the order; | 10
11
12 |
| (e) | an order— | 13 |
| | (i) if the person is the holder of a licence or registration certificate when the order is made—that the licence or registration certificate be cancelled; or | 14
15
16
17 |
| | (ii) whether or not the person is the holder of a licence or registration certificate when the order is made—that the person be disqualified permanently, or for the period stated in the order, from holding a licence or registration certificate; | 18
19
20
21
22 |
| (f) | an order imposing conditions on, or amending or revoking the conditions of, the person's licence or registration certificate; | 23
24
25 |
| (g) | another order QCAT considers appropriate to ensure the person complies with this Act. | 26
27 |
| (2) | QCAT may not make an order under subsection (1)(e)(ii) disqualifying the person from holding a licence or registration certificate if QCAT is satisfied that a court has, in relation to the matter giving rise to the disciplinary proceeding— | 28
29
30
31 |

-
- (a) been asked to make an order under section 229(1) or (4) disqualifying the person from holding a licence or registration certificate; and
 - (b) declined to do so.
- (3) If QCAT makes an order under subsection (1)(e)(i) in relation to an individual that a licence or registration certificate be cancelled, QCAT must also order that the person be disqualified, for the period stated in the order, from holding a licence of the type to which the order relates or a registration certificate.
- (4) The chief executive may recover a fine, ordered by QCAT to be paid by the person to the chief executive, as a debt owing to the chief executive in a court with jurisdiction to recover debts up to the amount of the fine.

200 Stopping contraventions

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

[s 201]

Maximum penalty—540 penalty units.	1
(6) An order under this section has effect on the giving of a copy of the order to the prohibited person.	2 3
Subdivision 5 Chief executive’s right of appeal	4
201 Appeal	5
(1) The chief executive may appeal to the appeal tribunal against any decision of QCAT under this Act, but only on the ground of error of law.	6 7 8
(2) In this section—	9
<i>appeal tribunal</i> means QCAT as constituted under the QCAT Act, section 166 for the purposes of an appeal.	10 11
Division 2 Conduct of proceedings	12
202 Confidentiality of criminal intelligence in proceedings	13
(1) This section applies if—	14
(a) a person seeks a review of any of the following decisions made by the chief executive—	15 16
(i) a refusal to issue, renew or restore a motor dealer licence or registration certificate;	17 18
(ii) a cancellation of a motor dealer licence under section 63(1) or registration certificate under section 182(1);	19 20 21
(iii) a refusal to appoint a nominated person mentioned in section 51(3) or 52(4) as a substitute licensee for a motor dealer licence; and	22 23 24
(b) the decision was made as a result of advice given by the commissioner that the following person (the <i>relevant person</i>) is an identified participant in a criminal organisation—	25 26 27 28

-
- (i) for a decision mentioned in subsection (1)(a)(i) or (ii), the person seeking review of the decision, or if the person is a corporation, an executive officer of the corporation; 1
2
3
4
- (ii) for a decision mentioned in subsection (1)(a)(iii)—the nominated person. 5
6
- (2) For a proceeding relating to an application for review of the decision by QCAT or a proceeding about the decision in the Supreme Court— 7
8
9
- (a) the commissioner is a party to the proceeding; and 10
- (b) the commissioner must give QCAT or the Supreme Court a statement of reasons about the identification of the relevant person by the commissioner as an identified participant in a criminal organisation. 11
12
13
14
- (3) For a proceeding mentioned in subsection (2), QCAT or the Supreme Court may— 15
16
- (a) review the identification by the commissioner of the relevant person as an identified participant in a criminal organisation; and 17
18
19
- (b) as it considers appropriate to protect the confidentiality of criminal intelligence— 20
21
- (i) receive evidence and hear argument about the criminal intelligence in the absence of parties to the proceeding and their representatives; and 22
23
24
- (ii) take evidence consisting of criminal intelligence by way of affidavit of a police officer of at least the rank of superintendent. 25
26
27
- (4) If QCAT or the Supreme Court considers information has been incorrectly categorised by the commissioner as criminal intelligence, the commissioner may withdraw the information from consideration by QCAT or the court. 28
29
30
31
- (5) Information that is withdrawn under subsection (4) by the commissioner must not be— 32
33
- (a) disclosed to any person; or 34
-

[s 203]

- (b) taken into consideration by QCAT or the Supreme Court. 1
2
- (6) In this section— 3
 - criminal intelligence* means— 4
 - (a) advice given by the commissioner to the chief executive under section 30(3) or 163(2) that the relevant person is a participant in a criminal organisation; and 5
6
7
 - (b) information held by the commissioner that is relevant to whether the relevant person is an identified participant in a criminal organisation. 8
9
10
- 203 Application of Judicial Review Act 1991** 11
 - (1) The *Judicial Review Act 1991*, part 4 does not apply to a decision (a *relevant decision*) of the chief executive mentioned in section 202(1). 12
13
14
 - (2) Subject to section 193 and this division, unless the Supreme Court decides that a relevant decision is affected by jurisdictional error, the relevant decision— 15
16
17
 - (a) is final and conclusive; and 18
 - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity); and 19
20
21
22
23
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. 24
25
26
 - (3) The *Judicial Review Act 1991*, part 5 applies to a relevant decision to the extent it is affected by jurisdictional error. 27
28

Part 8	Injunctions and undertakings	1
Division 1	Injunctions	2
204	Grounds for injunction	3
	The District Court may grant an injunction against a person if the court is satisfied that the person (a <i>respondent</i>) has engaged, or is proposing to engage, in conduct that constitutes or would constitute—	4 5 6 7
	(a) a contravention of this Act or a prescribed conduct provision; or	8 9
	(b) attempting to contravene this Act or a prescribed conduct provision; or	10 11
	(c) aiding, abetting, counselling or procuring a person to contravene this Act or a prescribed conduct provision; or	12 13 14
	(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act or a prescribed conduct provision; or	15 16 17
	(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act or a prescribed conduct provision; or	18 19 20
	(f) conspiring with others to contravene this Act or a prescribed conduct provision.	21 22
205	Who may apply for injunction	23
	The following persons may apply to the District Court for an injunction—	24 25
	(a) the chief executive;	26
	(b) a person aggrieved by the respondent’s conduct.	27

[s 206]

206	When injunction may be granted	1
	An injunction under this division may be granted by the District Court against the respondent at any time.	2 3
207	Court's powers for injunctions	4
(1)	The power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised—	5 6 7
(a)	whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and	8 9 10
(b)	whether or not the person has previously engaged in conduct of that kind.	11 12
(2)	The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—	13 14
(a)	whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and	15 16 17
(b)	whether or not the person has previously failed to do the act or thing.	18 19
(3)	An interim injunction may be granted under this part until the application is finally decided.	20 21
(4)	The District Court may rescind or vary an injunction at any time.	22 23
208	Terms of injunction	24
(1)	The District Court may grant an injunction in the terms the court considers appropriate.	25 26
(2)	Without limiting the court's power under subsection (1), an injunction may be granted restraining a person from carrying on a business as a licensee (whether or not the person is licensed or the business is carried on as part of, or incidental to, the carrying on of another business)—	27 28 29 30 31

(a)	for a stated period; or	1
(b)	except on stated terms and conditions.	2
(3)	Also, the court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person's contravention of this Act or a prescribed conduct provision.	3 4 5 6 7
209	Undertakings as to costs	8
	If the chief executive applies for an injunction under this division, no undertaking as to damages or costs may be required or made.	9 10 11
Division 2	Undertakings	12
210	Chief executive may seek undertaking after contravention	13 14
(1)	If the chief executive believes on reasonable grounds a person has contravened or been involved in a contravention of this Act or a prescribed conduct provision, the chief executive may by written notice given to the person—	15 16 17 18
(a)	state the act or omission the chief executive believes is the contravention; and	19 20
(b)	ask the person to give the chief executive a written undertaking the person will not continue or repeat the act or omission.	21 22 23
(2)	The chief executive can not start an offence proceeding against the person for the contravention if—	24 25
(a)	the person gives the undertaking; and	26
(b)	for a contravention that is conduct consisting of a series of acts or omissions, the person stops the conduct; and	27 28
(c)	the person does not repeat the act or omission; and	29

[s 211]

(d)	the chief executive accepts the undertaking.	1
(3)	Subsection (2) does not apply if the chief executive withdraws the undertaking under section 212.	2 3
211	Undertaking about other matter	4
	Without limiting section 210, 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.	5 6 7
	<i>Example of type of undertaking for this section—</i>	8
	an undertaking to publish corrective advertising	9
212	Variation and withdrawal of undertakings	10
(1)	If the chief executive accepts the undertaking, it may be varied or withdrawn at any time by—	11 12
(a)	the person who gave it, but only if the chief executive agrees to the variation or withdrawal; or	13 14
(b)	the chief executive, if the chief executive believes on reasonable grounds that—	15 16
(i)	before it was accepted, the person who gave it contravened this Act or PAMDA, in a way unknown to the chief executive; and	17 18 19
(ii)	had the chief executive known about the contravention, the chief executive would not have accepted the undertaking or would not have accepted it unless its terms were changed.	20 21 22 23
(2)	The chief executive may also withdraw the undertaking if the chief executive believes, on reasonable grounds, it is no longer necessary.	24 25 26
(3)	If the chief executive varies or withdraws, or agrees to the variation or withdrawal of, the undertaking, the chief executive must give the person who gave it written notice of its variation or withdrawal.	27 28 29 30

(4)	The variation or withdrawal takes effect when written notice of the variation or withdrawal is received by the person.	1 2
213	Enforcement of undertakings	3
(1)	If the chief executive believes on reasonable grounds a person who gave an undertaking has contravened a term of the undertaking, the chief executive may apply to the District Court for an order under this section.	4 5 6 7
(2)	If the District Court is satisfied the person has contravened the term, the court may make 1 or more of the following orders—	8 9
(a)	an order directing the person to comply with the term;	10
(b)	an order directing the person to pay to the State an amount that is not more than the direct or indirect financial benefit obtained by the person from, and reasonably attributable to, the contravention;	11 12 13 14
(c)	an order directing the person to pay compensation to someone else who has suffered loss or damage because of the contravention;	15 16 17
(d)	an order directing the person to give a security bond to the State for a stated period;	18 19
(e)	another order the court considers appropriate.	20
(3)	The District Court may order the forfeiture to the State of all or part of a security bond given by a person under subsection (2)(d) if—	21 22 23
(a)	the chief executive applies to the court for the order; and	24
(b)	the court is satisfied that the person contravened the undertaking during the period for which the bond was given.	25 26 27
214	Register of undertakings	28
(1)	The chief executive must keep a register of undertakings under this division.	29 30
(2)	The register must contain a copy of each undertaking.	31

[s 215]

(3)	The chief executive may publish information contained in the register on the department's website.	1 2
(4)	A person may, on payment of the fee prescribed under a regulation, inspect or get a copy of details in the register—	3 4
(a)	at a place or places decided by the chief executive; or	5
(b)	by using a computer.	6
(5)	A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.	7 8
(6)	The register may be kept in the way the chief executive considers appropriate.	9 10
Part 9	General contraventions and evidentiary matters	11 12
Division 1	General contraventions	13
215	Wrongful conversion and false accounts	14
(1)	This section applies if a licensee, in the performance of the activities of a licensee, or a motor salesperson, in the performance of the activities of a motor salesperson—	15 16 17
(a)	receives an amount belonging to someone else; or	18
(b)	falsely accounts for money.	19
(2)	A licensee or motor salesperson who—	20
(a)	dishonestly converts the amount to the licensee's or salesperson's own or someone else's use; or	21 22
(b)	dishonestly renders an account of the amount knowing it to be false in a material particular;	23 24
	commits a crime.	25

-
- Maximum penalty—1000 penalty units or 5 years imprisonment. 1
2
- (3) For a prosecution under subsection (2)(a), it is enough for the 3
prosecution to prove that the licensee or motor salesperson 4
dishonestly converted an amount belonging to someone else 5
to the licensee’s or salesperson’s own use or someone else’s 6
use without having to prove that the amount belonged to a 7
particular person. 8
- (4) If conduct alleged to constitute an offence under subsection 9
(2) is recurrent so that, apart from this subsection, each 10
instance of the conduct would allegedly constitute a separate 11
offence, 2 or more instances of the conduct are to be taken to 12
constitute 1 alleged offence committed over the period stated 13
in the complaint or indictment in relation to the conduct, and 14
may be charged and proceeded against on 1 charge. 15
- (5) A licensee or motor salesperson in the performance of the 16
activities of a licensee or motor salesperson must not, 17
including by the rendering of an account, represent that the 18
licensee or salesperson has received an amount from someone 19
else when the licensee or salesperson had not in fact received 20
the amount. 21
- Maximum penalty—540 penalty units. 22
- (6) In this section— 23
- former licensee* means a person who held— 24
- (a) a licence under this Act; or 25
- (b) a motor dealer’s licence or former auctioneers licence 26
under PAMDA. 27
- licensee* includes a former licensee and a person who is not 28
licensed, but who acts as a licensee. 29
- Note*— 30
- A person may make a claim, under the Administration Act, against the 31
fund if the person suffers financial loss because of a contravention of 32
this section. 33

[s 216]

216	False representations about goods	1
(1)	A licensee or motor salesperson must not represent in any way to someone else anything that is false or misleading about the sale or auction of goods.	2 3 4
	Maximum penalty—540 penalty units.	5
(2)	Without limiting subsection (1), a representation is taken, for the subsection, 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 state of affairs does exist.	6 7 8 9 10
(3)	Also, if a person makes a representation about a matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading.	11 12 13
(4)	The onus of establishing that the person had reasonable grounds for making the representation is on the person.	14 15
(5)	It is not a defence in a proceeding for a contravention of subsection (1) 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.	16 17 18 19
(6)	This section does not limit another Act or law about false or misleading representations.	20 21
	<i>Note—</i>	22
	See, for example, the Australian Consumer Law, section 29.	23
(7)	In this section—	24
	<i>false or misleading</i> , in relation to a representation, includes the wilful concealment of a material fact in the representation.	25 26
	<i>Note—</i>	27
	A person may make a claim, under the Administration Act, against the fund if the person suffers financial loss because of a contravention of this section.	28 29 30

217	Chief executive's power to ask for substantiation of representations	1 2
(1)	This section applies if the chief executive believes, on reasonable grounds, that a licensee or motor salesperson has made a representation in contravention of section 216(1).	3 4 5
(2)	The chief executive may, by written notice, ask the person to give to the chief executive written proof that supports the representation.	6 7 8
(3)	The notice must—	9
(a)	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	10 11 12
(b)	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.	13 14 15
(4)	The person must respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to comply. Maximum penalty—100 penalty units.	16 17 18 19
(5)	It is a reasonable excuse for an individual to fail to comply with subsection (4) if complying with the subsection would tend to incriminate the individual.	20 21 22
218	False representations about mileage	23
	A person must not wilfully represent in any way to someone else anything that is false or misleading about the total distance travelled by a motor vehicle. Maximum penalty—540 penalty units.	24 25 26 27
219	Tampering with odometers	28
(1)	A person must not tamper with or replace a motor vehicle's odometer with intent to falsely represent that, at a particular time, the vehicle—	29 30 31

[s 220]

(a)	has travelled a distance less than a specified distance; or	1
(b)	has travelled a distance more than a specified distance.	2
	Maximum penalty—200 penalty units or 2 years imprisonment.	3 4
(2)	If a court finds a person guilty of an offence against subsection (1), the court may, on its own initiative or on the application of the prosecution or a person who has suffered loss, order the person who committed the offence to compensate the person who suffered loss for loss resulting from the commission of the offence.	5 6 7 8 9 10
(3)	In any proceeding, the distance shown at any time on the odometer tampered with or replaced is evidence of a false representation by the person who tampered with or replaced the odometer that the vehicle—	11 12 13 14
(a)	has travelled a distance less than a specified distance shown on the odometer; or	15 16
(b)	has travelled a distance more than a specified distance shown on the odometer.	17 18
(4)	Subsection (2) does not limit a court’s powers under the <i>Penalties and Sentences Act 1992</i> or any other law.	19 20
220	Offence to charge fee for providing documents etc.	21
(1)	A licensee or a motor salesperson must not charge a fee for the provision, preparation or completion of a document that is authorised or required to be provided, prepared or completed under the Act.	22 23 24 25
	Maximum penalty—200 penalty units or 1 year’s imprisonment.	26 27

(2)	Subsection (1) does not limit the <i>Legal Profession Act 2007</i> , section 24 or 25.	1 2
221	False or misleading statements	3
	A person must not, for this Act, state anything to an official the person knows is false or misleading in a material particular.	4 5 6
	Maximum penalty—200 penalty units or 2 years imprisonment.	7 8
222	False or misleading documents	9
(1)	A person must not, for this Act, give an official a document containing information the person knows is false or misleading in a material particular.	10 11 12
	Maximum penalty—200 penalty units or 2 years imprisonment.	13 14
(2)	Subsection (1) does not apply to a person if the person, when giving the document—	15 16
(a)	informs the official, to the best of the person’s ability, how it is false or misleading; and	17 18
(b)	if the person has, or can reasonably obtain, the correct information—gives the correct information.	19 20
(3)	A person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false or misleading in a material particular.	21 22 23
	Maximum penalty—200 penalty units or 2 years imprisonment.	24 25

[s 223]

Division 2	Evidentiary matters	1
223	Evidence of tampering by a motor dealer or chattel auctioneer	2 3
(1)	Evidence that a motor vehicle's odometer reading when the vehicle was in the possession of a motor dealer or chattel auctioneer was less than its reading when the dealer or chattel auctioneer took possession of the vehicle is evidence that—	4 5 6 7
(a)	the motor vehicle's odometer was tampered with or replaced; and	8 9
(b)	the dealer or chattel auctioneer contravened section 219(1)(a).	10 11
(2)	Evidence that a motor vehicle's odometer was tampered with or replaced to increase the distance shown on the odometer when the vehicle was in a motor dealer's or chattel auctioneer's possession is evidence that the dealer or chattel auctioneer contravened section 219(1)(b).	12 13 14 15 16
(3)	In this section—	17
	<i>possession</i> , of a motor vehicle, includes custody and control of the vehicle.	18 19
224	Continuing false representation—tampered with odometer	20 21
(1)	This section applies, in any proceeding, if there is evidence (<i>relevant evidence</i>) that a person intentionally tampered with or replaced the odometer of a motor vehicle so that it showed that the vehicle at that time—	22 23 24 25
(a)	had not travelled the distance shown on the odometer before it was tampered with; or	26 27
(b)	had travelled more than the distance shown on the odometer before it was tampered with.	28 29
(2)	The distance shown at any time afterwards on the odometer is evidence of a false representation by a person at that later time that—	30 31 32

-
- (a) if the relevant evidence relates to subsection (1)(a)—the vehicle had not travelled more than the distance shown on the odometer; or 1
2
3
 - (b) if the relevant evidence relates to subsection (1)(b)—the vehicle had travelled more than the distance shown on the odometer. 4
5
6

225 Evidentiary provisions 7

- (1) This section applies to a proceeding under this Act. 8
- (2) The appointment or power of an inspector must be presumed unless a party, by reasonable notice, requires proof of— 9
10
 - (a) the appointment; or 11
 - (b) the power to do anything under this Act. 12
- (3) A signature purporting to be the signature of the chief executive is evidence of the signature it purports to be. 13
14
- (4) A certificate purporting to be signed by the chief executive, a member of QCAT or the registrar stating any of the following matters is evidence of the matter— 15
16
17
 - (a) a stated document is— 18
 - (i) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or 19
20
21
 - (ii) a notice, or a copy of a notice, given under this Act; or 22
23
 - (iii) a record, or a copy of a record, kept under this Act; or 24
25
 - (iv) a document, or a copy of a document, kept under this Act; 26
27
 - (b) on a stated day, a stated person— 28
 - (i) was, or was not, the holder of a stated licence or registration certificate under this Act; or 29
30

[s 226]

- (ii) was given a stated notice, order, requirement or direction under this Act. 1
2
- (5) In this section— 3
registrar means the principal registrar under the QCAT Act. 4
- 226 Entries in licensee’s documents** 5
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. 6
7
8
- Division 3 Proceedings** 9
- 227 Proceedings for an offence** 10
- (1) Subject to subsection (2), a proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* within the later of the following— 11
12
13
- (a) 1 year after the offence is committed; 14
- (b) 6 months after the commission of the offence comes to the complainant’s knowledge, but within 2 years after the commission of the offence. 15
16
17
- (2) A proceeding for an indictable offence may be taken, at the prosecution’s election— 18
19
- (a) by way of summary proceedings under the *Justices Act 1886*; or 20
21
- (b) on indictment. 22
- (3) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding— 23
24
- (a) for the summary conviction of the person; or 25
- (b) for an examination of witnesses in relation to the charge. 26
- (4) If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking 27
28

-
- or making a procedural action or order within the meaning of
the *Justices of the Peace and Commissioners for Declarations
Act 1991*. 1
2
3
- (5) If— 4
- (a) a person charged with an indictable offence asks at the 5
start of a summary proceeding for the offence that the 6
charge be prosecuted on indictment; or 7
- (b) the magistrate hearing a charge of an indictable offence 8
considers the charge should be prosecuted on 9
indictment; 10
- the magistrate— 11
- (c) must not decide the charge as a summary offence; and 12
- (d) must proceed by way of a committal proceeding. 13
- (6) If a magistrate acts under subsection (5)— 14
- (a) any plea of the person charged, made at the start of the 15
proceeding, must be disregarded; and 16
- (b) any evidence brought in the proceeding before the 17
magistrate decided to act under subsection (5) is taken to 18
be evidence in the proceeding for the committal of the 19
person for trial or sentence; and 20
- (c) before committing the person for trial or sentence, the 21
magistrate must make a statement to the person under 22
the *Justices Act 1886*, section 104(2)(b). 23
- (7) The maximum penalty that may be imposed on a summary 24
conviction of an indictable offence is 200 penalty units or 1 25
year's imprisonment. 26
- (8) In this section— 27
- indictable offence*** means an offence against this Act for 28
which the maximum penalty of imprisonment is more than 2 29
years. 30

[s 228]

228	Responsibility for acts or omissions of representatives	1
(1)	This section applies in a proceeding for an offence against this Act.	2 3
(2)	If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—	4 5
(a)	the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and	6 7 8
(b)	the representative had the state of mind.	9
(3)	An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.	10 11 12 13 14 15
(4)	In this section—	16
	<i>offence</i> includes a contravention of this Act for which an amount may be ordered by the District Court or QCAT to be paid as a money penalty.	17 18 19
	<i>representative</i> means—	20
(a)	of a corporation—an executive officer, employee or agent of the corporation; or	21 22
(b)	of an individual—an employee or agent of the individual.	23 24
	<i>state of mind</i> , of a person, includes—	25
(a)	the person's knowledge, intention, opinion, belief or purpose; and	26 27
(b)	the person's reasons for the intention, opinion, belief or purpose.	28 29
229	Power of court	30
(1)	A court may, in addition to any other penalty it may impose, order that a licensee's licence or a motor salesperson's	31 32

registration certificate be suspended for a stated period or cancelled if the licensee or motor salesperson has been convicted of an offence against this Act.	1 2 3
(2) Subsection (3) applies if—	4
(a) the court orders that a licensee’s licence be cancelled and the licensee is an individual; or	5 6
(b) the court orders a motor salesperson’s registration certificate be cancelled.	7 8
(3) The court must also order that the licensee or motor salesperson be disqualified for a stated period or permanently from holding a licence or registration certificate.	9 10 11
(4) The court may also order that a person convicted of an offence against this Act be disqualified from holding a licence or registration certificate under this Act for a stated period or permanently.	12 13 14 15
(5) The court may make an order under subsection (1) or (4)—	16
(a) on the chief executive’s application; or	17
(b) on its own initiative.	18
(6) If an order is made by a court under this section on the court’s own initiative, the court must cause a copy of the order to be given to the chief executive.	19 20 21
230 Allegations of false or misleading representations or statements etc.	22 23
In any proceeding for an offence against this Act involving a false or misleading statement, representation or entry, or false or misleading information, it is enough for a charge to state that the statement, representation, entry or information was ‘false or misleading’.	24 25 26 27 28

[s 231]

Part 10	General	1
231	Public warning statements	2
(1)	The Minister or chief executive may make or issue a public statement identifying and giving warnings or information about any of the following—	3 4 5
(a)	contraventions of a prescribed conduct provision that have resulted in disciplinary action and persons who commit the contraventions;	6 7 8
(b)	business practices regulated under this Act that are unfair and persons who engage in the unfair practices;	9 10
(c)	the commission of offences against this Act and persons who commit the offences.	11 12
(2)	The statement may identify particular contraventions, business practices, offences and persons.	13 14
(3)	The Minister or chief executive must not make or issue a statement under this section unless satisfied that it is in the public interest to do so.	15 16 17
232	Civil remedies not affected	18
	Nothing in this Act affects or limits any civil remedy that a person may have against a licensee or another person for any matter.	19 20 21
233	Criminal Proceeds Confiscation Act 2002 not limited	22
	Nothing in this Act limits the <i>Criminal Proceeds Confiscation Act 2002</i> .	23 24
234	Delegation—chief executive	25
	The chief executive may delegate the chief executive’s powers, other than power under section 231, to an appropriately qualified public service employee.	26 27 28

235	Approved forms	1
	The chief executive may approve forms for use under this Act.	2
236	Regulation-making power	3
(1)	The Governor in Council may make regulations under this Act.	4 5
(2)	A regulation may be made about the following—	6
(a)	matters relating to the conduct of—	7
(i)	motor dealing practice by a motor dealer or motor salesperson; or	8 9
(ii)	chattel auctioneering practice by a chattel auctioneer;	10 11
(b)	fees, including the refunding of fees, payable under this Act;	12 13
(c)	the amounts of fees that may be charged for transactions by licensees;	14 15
(d)	imposing penalties for contraventions of regulations of not more than 20 penalty units;	16 17
(e)	the keeping or destruction of motor vehicle identifiers;	18
(f)	the display at a motor dealer’s registered office of the motor dealer’s usual hours of business;	19 20
(g)	imposing time limits within which a del credere agent must pay the purchase price of livestock the agent is authorised to sell to the seller of the livestock;	21 22 23
(h)	the financial or insurance protection requirements for del credere agents;	24 25
(i)	imposing limits on out-of-pocket expenses incurred in the performance of activities under licences;	26 27
(j)	the keeping of records, including the form in which a record is kept;	28 29
(k)	the keeping of receipts and evidence of expenditure;	30

[s 237]

- (l) the period for which documents required to be kept 1
under this Act are to be kept. 2

Part 11 Transitional provisions 3

237 Transitional provisions for repeal of PAMDA 4

- (1) This section is included for information purposes only. 5
- (2) The *Property Occupations Act 2013*, part 14 includes 6
provisions of a saving or transitional nature about particular 7
matters arising from the repeal of PAMDA, including, for 8
example, provisions providing for the following— 9
- (a) continuation of motor dealer’s licences under PAMDA 10
as motor dealer licences under this Act; 11
- (b) continuation of registration certificates as motor 12
salespersons under PAMDA as registration certificates 13
under this Act; 14
- (c) continuation of particular licences or registration 15
certificates under PAMDA as chattel auctioneer licences 16
under this Act; 17
- (d) dealing with undecided applications for motor dealer’s 18
licences under PAMDA as applications for motor dealer 19
licences under this Act; 20
- (e) dealing with undecided applications for registration 21
certificates as motor salespersons under PAMDA as 22
applications for registration as motor salespersons under 23
this Act; 24
- (f) dealing with undecided applications for particular 25
licences or registration certificates under PAMDA as 26
applications for chattel auctioneer licences under this 27
Act; 28

(g)	dealing with undecided applications for particular expired licences or expired registration certificates under PAMDA;	1 2 3
(h)	continuation of reviews of decisions under PAMDA;	4
(i)	dealing with a person's conduct before the commencement of a kind regulated by this Act;	5 6
(j)	continuation of statutory warranties for used motor vehicles under PAMDA.	7 8
Part 12	Minor and consequential amendments	9 10
238	Minor and consequential amendments	11
	Schedule 3 amends the Acts it mentions.	12

Schedule 1 Statutory warranty provisions 1

sections 115 and 145 2

Part 1 Preliminary 3

1 Definitions for sch 1 4

In this schedule— 5

defect see section 2. 6

defect notice see section 9(1). 7

licensee includes a person performing the activities of a licensee without a licence. 8
9

repair period see section 12(2). 10

statutory warranty means the warranty under section 7. 11

time of taking possession, of a vehicle, means when the buyer of the vehicle takes possession of the vehicle under a contract for its purchase. 12
13
14

warranted vehicle see section 3. 15

warrantor, of a warranted vehicle, means the licensee who owns the vehicle immediately before the time of taking possession. 16
17
18

Examples— 19

1 A, a motor dealer, sells a warranted vehicle owned by A at auction. A is the warrantor of the vehicle. 20
21

2 A, a chattel auctioneer, sells a warranted vehicle owned by D, a motor dealer, at auction. D is the warrantor of the vehicle. 22
23

warranty advice see section 11(2). 24

warranty period see section 4. 25

2	Meaning of <i>defect</i>	1
	A warranted vehicle has a <i>defect</i> for this schedule if—	2
	(a) a part of the vehicle does not perform its intended function; or	3 4
	(b) a part of the vehicle has deteriorated to an extent where it can not reasonably be relied on to perform its intended function.	5 6 7
3	Meaning of <i>warranted vehicle</i>	8
	(1) A used motor vehicle is a <i>warranted vehicle</i> if—	9
	(a) on the day of its sale, it has an odometer reading of less than 160000km; and	10 11
	(b) its built date is no more than 10 years before the day of its sale.	12 13
	(2) However, a <i>warranted vehicle</i> does not include—	14
	(a) an unregistered motor vehicle that is—	15
	(i) incapable of being registered in Queensland because of its design; or	16 17
	(ii) a written-off vehicle; or	18
	(b) a motor vehicle sold on consignment, unless the owner of the vehicle is a licensee; or	19 20
	(c) a commercial vehicle; or	21
	(d) a caravan; or	22
	(e) a motorcycle.	23
	(3) Subject to subsection (4), for subsection (1)(b), the <i>built date</i> of a used motor vehicle is—	24 25
	(a) if the words ‘built’ or ‘built date’ and a date are stamped on a metal component of the vehicle or a metal plate, other than the vehicle’s compliance plate or identification plate, affixed to the vehicle—that date; or	26 27 28 29
	(b) if paragraph (a) does not apply—the date stamped on the vehicle’s compliance plate or identification plate.	30 31

Schedule 1

(4)	For a date under subsection (3)(a) or (b) that refers only to a month in a particular year, the date for the paragraph is taken to be the first day of the next month.	1 2 3
(5)	In this section— <i>compliance plate</i> means a plate authorised to be placed on a vehicle, or taken to have been placed on a vehicle, under the <i>Motor Vehicle Standards Act 1989</i> (Cwlth). <i>identification plate</i> has the meaning given by the <i>Motor Vehicle Standards Act 1989</i> (Cwlth).	4 5 6 7 8 9
4	Meaning of <i>warranty period</i>	10
(1)	Subject to subsection (2), the <i>warranty period</i> of a warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached—	11 12 13
(a)	the vehicle travels 5000km since the time of taking possession;	14 15
(b)	5p.m. on—	16
(i)	the day 3 months after the time of taking possession if—	17 18
(A)	that day is not a Sunday or public holiday; and	19 20
(B)	on that day the warrantor’s place of business is open for business; or	21 22
(ii)	the first day, after the day 3 months after the time of taking possession, that—	23 24
(A)	is not a Sunday or public holiday; and	25
(B)	the warrantor’s place of business is open for business.	26 27
(2)	The warranty period is extended by 1 day for each day or part of a day the warranted vehicle is not in the possession of the buyer of the vehicle if—	28 29 30
(a)	the buyer has complied with section 9(1); and	31

	(b) a defect in the vehicle is being repaired by, or at the direction of, the warrantor of the vehicle under the statutory warranty.	1 2 3
5	Application of sch 1	4
	(1) This schedule applies to each warranted vehicle sold by a licensee—	5 6
	(a) as the owner of the vehicle; or	7
	(b) on consignment for another licensee.	8
	(2) However, this schedule does not apply to the sale of a motor vehicle by a licensee to another licensee.	9 10
Part 2	Provisions about statutory warranty	11 12
6	Licensee must give buyer notice about statutory warranty	13 14
	(1) A licensee who sells a warranted vehicle must give the buyer of the vehicle a notice in the approved form—	15 16
	(a) if the vehicle is sold by auction—immediately after the contract for its purchase is entered into; or	17 18
	(b) otherwise—before a contract for its purchase is entered into.	19 20
	Maximum penalty—100 penalty units.	21
	(2) The buyer must acknowledge receipt of the notice by signing a copy of it.	22 23
	(3) A reference in subsection (1) to the <i>buyer</i> of a warranted vehicle that is sold other than by auction includes a reference to the buyer as the proposed buyer of the vehicle before it is sold.	24 25 26 27

7	Statutory warranty	1
(1)	The warrantor of a warranted vehicle warrants that—	2
(a)	the vehicle is free from defects at the time of taking possession and for the warranty period; and	3 4
(b)	defects in the vehicle reported during the warranty period will be repaired by the warrantor free of charge.	5 6
(2)	In this section—	7
	<i>defects</i> does not include defects not covered by the statutory warranty.	8 9
8	Defects not covered by statutory warranty	10
	The following defects in a warranted vehicle are not covered by the statutory warranty—	11 12
(a)	a defect in the vehicle’s paintwork or upholstery that should have been apparent on any reasonable inspection of the vehicle before the time of taking possession;	13 14 15
(b)	a defect after the time of taking possession—	16
(i)	arising from or incidental to any accidental damage to the vehicle; or	17 18
(ii)	arising from the buyer’s misuse or negligence; or	19
(iii)	in an accessory to the vehicle not fitted to the vehicle when sold to the buyer;	20 21
(c)	a defect in something else prescribed by regulation.	22
9	Buyer’s obligations under statutory warranty	23
(1)	If the buyer of a warranted vehicle believes the vehicle has a defect the warrantor of the vehicle is obliged to repair under this part, the buyer must give the warrantor written notice of the defect (<i>defect notice</i>) before the end of the warranty period and—	24 25 26 27 28
(a)	if the warranted vehicle is 200km or less from the warrantor’s place of business when the defect notice is given—deliver the vehicle to—	29 30 31

-
- (i) the warrantor to repair the defect; or 1
 - (ii) a qualified repairer nominated by the warrantor, by 2
signed writing given to the buyer of the vehicle, to 3
repair the defect; or 4
 - (b) if the warranted vehicle is more than 200km from the 5
warrantor’s place of business when the defect notice is 6
given— 7
 - (i) deliver the warranted vehicle to the qualified 8
repairer nominated by the warrantor by signed 9
writing given to the buyer of the vehicle and 10
nearest to the vehicle to repair the defect; or 11
 - (ii) deliver, at the warrantor’s expense, the warranted 12
vehicle to another qualified repairer nominated by 13
the warrantor by signed writing given to the buyer 14
of the vehicle to repair the defect. 15
 - (2) The buyer is taken to deliver the vehicle and the warrantor is 16
taken to have possession of the vehicle if the buyer makes 17
reasonable efforts to deliver the vehicle under this section but 18
is unable to do so because the warrantor, or the qualified 19
repairer nominated by the warrantor, refuses to accept 20
delivery of the vehicle. 21
 - (3) The place of delivery under subsection (1)(a)(ii) must not be 22
more than 20km from the warrantor’s place of business, 23
unless the warrantor and the buyer otherwise agree. 24
 - (4) In this section— 25

qualified repairer, for a warranted vehicle the subject of a 26
defect notice, means a person who is, or holds the 27
qualifications necessary to be appointed under the *Transport* 28
Operations (Road Use Management) Act 1995, section 21 to 29
be, an accredited person to perform vehicle safety inspections 30
for the vehicle. 31

warrantor includes someone apparently working for the 32
warrantor at the warrantor’s place of business. 33

10	Warrantor to record particulars of extension of warranty period	1 2
	The warrantor must keep a record, in the way prescribed under a regulation, of the day the warranted vehicle is delivered to the warrantor or nominated qualified repairer under section 9 and the day the vehicle is returned to the buyer.	3 4 5 6 7
	Maximum penalty—100 penalty units.	8
11	Warrantor to advise whether defect covered by statutory warranty	9 10
	(1) This section applies if a defect notice is given, and the vehicle is delivered, under section 9.	11 12
	(2) The warrantor must advise the buyer in writing (<i>warranty advice</i>) whether the warrantor accepts or refuses to accept that the defect is covered by the statutory warranty.	13 14 15
	(3) If the warrantor fails to give the warranty advice within 5 business days after receiving the defect notice and delivery of the vehicle, the warrantor is taken to have given a warranty advice accepting that the defect is covered by the statutory warranty.	16 17 18 19 20
	(4) In this section—	21
	<i>business day</i> , for the giving of a warranty advice by a warrantor, means a day, other than Sunday or a public holiday, when the warrantor’s place of business is open for business.	22 23 24 25
12	Warrantor’s obligation to repair defects	26
	(1) If the warrantor accepts that the defect in the vehicle is covered by the statutory warranty, the warrantor must repair the defect at the warrantor’s expense.	27 28 29
	(2) The warrantor must ensure that the defect is repaired within 14 days after the warrantor accepts that the defect is covered by the statutory warranty (<i>repair period</i>), unless the warrantor has a reasonable excuse.	30 31 32 33

Maximum penalty—200 penalty units.	1
(3) The warrantor—	2
(a) must, if the warrantor stops carrying on the business, or performing the activities, of a licensee, nominate someone else to repair the defect; and	3 4 5
(b) may otherwise nominate someone else to repair the defect.	6 7
(4) If the warrantor nominates a person to repair the defect under subsection (3), the warrantor must advise the buyer of the person's name and the address where the vehicle is to be repaired.	8 9 10 11
(5) The warrantor is taken to have repaired the defect if the part of the vehicle affected by the defect is repaired so that it can be reasonably relied on to perform its intended function.	12 13 14
(6) The warrantor's obligation to repair the defect under this section continues even though the warrantor is no longer carrying on the business, or performing the activities, of a licensee.	15 16 17 18
13 Warrantor's failure to repair	19
(1) This section applies if the warrantor has by warranty advice or otherwise—	20 21
(a) refused to accept that the defect is covered by the statutory warranty; or	22 23
(b) accepted that the defect is covered by the statutory warranty but—	24 25
(i) failed to repair a defect within the repair period; or	26
(ii) failed to repair the defect so that the defective part can be reasonably relied on to perform its intended function.	27 28 29
(2) The buyer may apply, as provided under the QCAT Act, to QCAT for an order under this section.	30 31
(3) Without limiting the orders QCAT may make under the QCAT Act, section 13, QCAT may make the following orders—	32 33

Schedule 1

- (a) an order that the defect is or is not a defect covered by the statutory warranty; 1
2
- (b) an order extending the warranty period for the warranted vehicle to a specified date; 3
4
- (c) an order declaring the warranted vehicle is covered by the statutory warranty until a specified date. 5
6
- (4) Also, QCAT may make an order that the warrantor pay to the buyer a stated amount QCAT decides is the reasonable cost of having a defect repaired if— 7
8
9
 - (a) the warrantor has, by warranty advice or otherwise, refused to accept that the defect is covered by the statutory warranty; and 10
11
12
 - (b) the buyer has had the defect repaired by another person; and 13
14
 - (c) QCAT decides that the defect was one to which the statutory warranty applied. 15
16
- (5) QCAT may make an order under subsection (3)(b) or (c) only if it is satisfied— 17
18
 - (a) the vehicle was not able to be used by the buyer for a period during the warranty period; and 19
20
 - (b) the period from which the order is to be effective to the date the warranty period is to end, and the period during which the vehicle was able to be used by the buyer, taken together, are not more than 3 months. 21
22
23
24
- (6) If, after the matter is heard by QCAT, an order is made by QCAT in the buyer's favour and the warrantor contravenes the order, the contravention is a ground for starting disciplinary proceedings under section 194. 25
26
27
28
- (7) Subsection (6) does not limit any right the buyer may have to enforce the order. 29
30

14	Applications for more than prescribed amount	1
(1)	This section applies if—	2
(a)	an application under section 13 may be made to QCAT; and	3 4
(b)	the application seeks the payment of an amount <i>(application amount)</i> greater than the prescribed amount.	5 6 7
(2)	In a provision of this part about the application—	8
(a)	a reference to QCAT is taken to be a reference to a court having jurisdiction for the recovery of a debt equal to the application amount; and	9 10 11
(b)	the provision applies with necessary changes as if QCAT were the court.	12 13
(3)	In this section—	14
	<i>prescribed amount</i> means the prescribed amount as defined under the QCAT Act.	15 16

Schedule 2 **Decisions subject to review** 1

section 196 2

- section 23(2) (Chief executive must consider suitability of applicants and licensees)
- section 36(1) (Chief executive may issue or refuse to issue licence)
- section 39(1) (Licence—conditions)
- section 44(1) (Chief executive may renew or refuse to renew licence)
- section 48(1) (Chief executive may restore or refuse to restore licence)
- section 53(1) (Chief executive may appoint or refuse to appoint substitute licensee)
- section 56(1) (Amendment of licence conditions)
- section 61(2) (Immediate suspension)
- section 63(1) (Cancellation of motor dealer licence—identified participant)
- section 158(2) (Chief executive must consider suitability of applicants)
- section 166(1) (Chief executive may issue or refuse to issue registration certificate)
- section 167(1) (Registration certificate—conditions)
- section 169(1) (Chief executive may renew or refuse to renew registration certificate)
- section 172(1) (Chief executive may restore or refuse to restore registration certificate)
- section 176(1) (Amendment of registration certificate conditions)

section 180(2) (Immediate suspension)

section 182(1) (Cancellation—identified participant)

Schedule 3	Consequential amendments	1
	section 238	2
Part 1	Amendments of this Act	3
1	Long title, from ‘employees, to protect’—	4
	<i>omit, insert—</i>	5
	employees and to protect consumers against particular undesirable practices	6 7
2	Section 9, ‘schedule 4’—	8
	<i>omit, insert—</i>	9
	schedule 3	10
3	Schedule 4—	11
	<i>renumber</i> as schedule 3.	12
Part 2	Other amendments	13
	Criminal Organisation Act 2009	14
4	Schedule 2, definition <i>prescribed activity</i>, paragraph (f)—	15
	<i>omit, insert—</i>	16
	(f) acting as a motor dealer under the <i>Motor Dealers and Chattel Auctioneers Act 2013</i> ;	17 18

Duties Act 2001	1
5 Schedule 6, definition <i>vehicle dealer</i>, paragraph (a)—	2
<i>omit, insert—</i>	3
(a) the holder of a motor dealer licence under	4
the <i>Motor Dealers and Chattel Auctioneers</i>	5
<i>Act 2013</i> or the holder of an equivalent	6
licence or other authority under an Act of	7
another State that corresponds to that Act; or	8
Forestry Act 1959	9
6 Section 22—	10
<i>omit.</i>	11
Police Powers and Responsibilities Act 2000	12
7 Section 66(8), definition <i>motor dealer</i>, ‘<i>Property Agents</i>	13
<i>and Motor Dealers Act 2000</i>’—	14
<i>omit, insert—</i>	15
<i>Motor Dealers and Chattel Auctioneers Act 2013</i>	16

Queensland Civil and Administrative Tribunal Act 2009	1 2
8 Section 12(4), definition <i>relevant person</i>, paragraph (e), ‘Property Agents and Motor Dealers Act 2000, section 248 or 324’—	3 4 5
<i>omit, insert—</i>	6
<i>Motor Dealers and Chattel Auctioneers Act 2013, schedule 1, section 13</i>	7 8
9 Section 13(4)(a), ‘Property Agents and Motor Dealers Act 2000, section 324’—	9 10
<i>omit, insert—</i>	11
<i>Motor Dealers and Chattel Auctioneers Act 2013, schedule 1, section 13</i>	12 13
10 Schedule 3, definition <i>minor civil dispute</i>, paragraph 1(d), and editor’s note—	14 15
<i>omit, insert—</i>	16
(d) a claim for repair of a defect under the <i>Motor Dealers and Chattel Auctioneers Act 2013</i> , schedule 1, section 13; or	17 18 19
Second-hand Dealers and Pawnbrokers Act 2003	20
11 Section 6(2)(b)—	21
<i>omit, insert—</i>	22
(b) a chattel auctioneer, motor dealer or motor salesperson under the <i>Motor Dealers and Chattel Auctioneers Act 2013</i> to the extent the person may lawfully deal with	23 24 25 26

	second-hand property under the person's licence or registration certificate under that Act;	1 2 3
12	Section 6(4)(a)—	4
	<i>omit, insert—</i>	5
	(a) a chattel auctioneer under the <i>Motor Dealers and Chattel Auctioneers Act 2013</i> ;	6 7
13	Section 35(2)(b), from 'an auctioneer'—	8
	<i>omit, insert—</i>	9
	a chattel auctioneer licensed under the <i>Motor Dealers and Chattel Auctioneers Act 2013</i> .	10 11
	Transport Operations (Road Use Management) Act 1995	12 13
14	Section 46A(1)(a)(i), 'Property Agents and Motor Dealers Act 2000'—	14 15
	<i>omit, insert—</i>	16
	<i>Motor Dealers and Chattel Auctioneers Act 2013</i>	17

Schedule 4	Dictionary	1
	section 9	2
<i>Administration Act</i>	means the <i>Agents Financial Administration Act 2013</i> .	3 4
<i>Agents Act</i>	means—	5
(a)	the <i>Debt Collectors (Field Agents and Collection Agents) Act 2013</i> ; or	6 7
(b)	the <i>Property Occupations Act 2013</i> .	8
<i>approved form</i>	means a form approved under section 235.	9
<i>arrangement</i>	includes agreement, promise, scheme, transaction (with or without consideration), understanding and undertaking (whether express or implied).	10 11 12
<i>associate</i>	, of a person, other than for section 29, means—	13
(a)	a spouse, parent, brother, sister or child of the person; or	14
	<i>Note—</i>	15
	A reference to a spouse includes a de facto partner. For definitions of <i>spouse</i> and <i>de facto partner</i> , see the <i>Acts Interpretation Act 1954</i> , section 32DA and schedule 1.	16 17 18
(b)	a child of the person’s spouse.	19
<i>audit period</i>	see the <i>Administration Act</i> , section 33.	20
<i>audit report</i>	see the <i>Administration Act</i> , section 33.	21
<i>beneficial interest</i>	see section 10.	22
<i>business address</i>	, of a licensee, see 18(1)(b).	23
<i>business associate</i>	, of an applicant for a licence or a licensee, means a person with whom the applicant or licensee carries on, or intends carrying on, business under a licence.	24 25 26
<i>business day</i>	, for part 3, division 6, see section 98.	27
<i>buyer—</i>		28
(a)	for part 3, division 5—see section 96(1); or	29

-
- (b) for part 4, division 5—see section 142(1). 1
- caravan** means a trailer fitted, equipped, or used principally— 2
- (a) for camping; or 3
- (b) as a dwelling; or 4
- (c) for carrying on any trade or business. 5
- chattel auctioneer**— 6
- (a) generally, see section 122(1); or 7
- (b) for part 4, division 6, see also section 144. 8
- chattel auctioneer appointment** see section 125(1)(a). 9
- chattel auctioneer licence** means a chattel auctioneer licence 10
issued under this Act. 11
- client**— 12
- (a) for part 3, division 3, see section 81(1); or 13
- (b) for part 4, division 3, see section 125(1). 14
- commercial vehicle** means a motor vehicle— 15
- (a) built mainly for carrying or hauling goods; or 16
- (b) designed to carry more than 9 persons; 17
- but does not include a utility with a nominal load carrying 18
capacity of 1t or less. 19
- commissioner** means the commissioner of the police service. 20
- computer** means a mechanical, electronic or other device for 21
the processing of data. 22
- consignment**, for the sale of a motor vehicle, means the 23
delivering of the motor vehicle by a person into the possession 24
of a motor dealer or chattel auctioneer and the appointing of 25
the motor dealer or chattel auctioneer as an agent to sell the 26
vehicle for the vehicle's owner. 27
- continuing appointment**— 28
- (a) for part 3, division 3, see section 81(2)(b); or 29
- (b) for part 4, division 3, see section 125(3)(b). 30
-

<i>conviction</i> includes a plea of guilty or a finding of guilt by a court, but does not include a plea of guilty or a finding of guilt by a court if no conviction is recorded by the court.	1 2 3
<i>cooling-off period</i> , for part 3, division 6, see section 99.	4
<i>corresponding law</i> means a law of another State or New Zealand that provides for the same matter as this Act or a provision of this Act.	5 6 7
<i>criminal history</i> , of a person, means the person's criminal history as defined under the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> , other than for a conviction—	8 9 10
(a) to which the rehabilitation period under the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> has expired under that Act; and	11 12 13
(b) that is not revived as prescribed by section 11 of that Act.	14 15
<i>criminal history costs requirement</i> —	16
(a) generally for an applicant or licensee—see section 28(2); or	17 18
(b) for an applicant for, or for the renewal or restoration of, registration as a motor salesperson—see section 161(2).	19 20
<i>criminal history report</i> means a report about the criminal history of a person.	21 22
<i>criminal organisation</i> has the meaning given under the Criminal Code, section 1.	23 24
<i>defect</i> , for schedule 1, see schedule 1, section 2.	25
<i>defect notice</i> , for schedule 1, see schedule 1, section 9(1).	26
<i>del credere agent</i> means a chattel auctioneer who—	27
(a) is authorised under the chattel auctioneer's licence to sell livestock; and	28 29
(b) guarantees the payment of the livestock's purchase price to the seller of the livestock, even if the buyer of the livestock defaults in paying the purchase price.	30 31 32

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- employ** includes engage on a contract for services or commission and use the services of, whether or not for reward. 1
2
3
- employed licensee** means a licensee who performs the activities of a licensee as the employee of someone else. 4
5
- executive officer**, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation. 6
7
8
9
- financier** means a corporation— 10
- (a) whose ordinary business (whether or not it carries on any other business) is providing credit for motor vehicles; and 11
12
13
- (b) that does not carry on the business of dealing with motor vehicles other than for 1 or more of the following purposes— 14
15
16
- (i) selling motor vehicles on instalment terms; 17
- (ii) hiring out motor vehicles under hire purchase agreements; 18
19
- (iii) putting in place or enforcing securities over motor vehicles; 20
21
- (iv) hiring out or leasing motor vehicles, if the hiring out or leasing of a motor vehicle does not include a right to purchase the motor vehicle; 22
23
24
- (v) disposing of motor vehicles acquired by it in connection with a purpose mentioned in subparagraphs (i) to (iv). 25
26
27
- former auctioneers licence** means any of the following licences under PAMDA— 28
29
- (a) an auctioneer’s licence; 30
- (b) a pastoral house auctioneer’s licence; 31
- (c) a pastoral house director’s licence; 32
- (d) a pastoral house licence. 33
-

<i>former tribunal</i> means the tribunal under the repealed <i>Commercial and Consumer Tribunal Act 2003</i> .	1 2
<i>fund</i> means the claim fund established under the Administration Act, section 78.	3 4
<i>goods</i> means personal property that is tangible property and includes, for example, livestock and used motor vehicles.	5 6
<i>holder</i> —	7
(a) of a licence, means the person in whose name the licence is issued; or	8 9
(b) of a registration certificate, means the person in whose name the certificate is issued.	10 11
<i>identified participant</i> , in a criminal organisation, means a person who is identified by the commissioner as a participant in the organisation within the meaning of the Criminal Code, section 60A(3).	12 13 14 15
<i>in charge</i> see section 11.	16
<i>information notice</i> means a notice complying with the QCAT Act, section 157(2).	17 18
<i>insolvent under administration</i> means a person who is insolvent under administration under the Corporations Act, section 9.	19 20 21
<i>inspector</i> means a person who holds office under the <i>Fair Trading Inspectors Act 2013</i> as an inspector for this Act.	22 23
<i>licence</i> means a motor dealer licence or a chattel auctioneer licence.	24 25
<i>licence register</i> see section 68(1).	26
<i>licensed</i> , for a person, means licensed under this Act.	27
<i>licensee</i> —	28
(a) generally, means the holder of a motor dealer or chattel auctioneer licence that is in force; or	29 30
(b) for part 7, see section 192; or	31
(c) for schedule 1, see schedule 1, section 1.	32

<i>livestock</i> means cattle, horses, sheep or swine.	1
<i>misleading</i> includes deceptive.	2
<i>motor dealer</i> —	3
(a) generally, see section 76(1); or	4
(b) for part 3, division 7, see section 114.	5
<i>motor dealer appointment</i> see section 81(1)(a).	6
<i>motor dealer licence</i> means a motor dealer licence issued under this Act.	7 8
<i>motor salesperson</i> —	9
(a) generally, means a person who holds a registration certificate as a motor salesperson; or	10 11
(b) for part 7, see also section 192.	12
<i>motor vehicle</i> see section 12.	13
<i>non-refundable deposit</i> , for part 3, division 6, see sections 106(1) and 107(1).	14 15
<i>obtain</i> —	16
(a) for part 3, division 4, subdivision 3, see section 90; or	17
(b) for part 4, division 4, subdivision 3, see section 135.	18
<i>official</i> means—	19
(a) the chief executive; or	20
(b) a public service employee.	21
<i>option to purchase</i> includes a right granted or purportedly granted, but not immediately exercisable, to purchase or to be given an option to purchase.	22 23 24
<i>PAMDA</i> means the repealed <i>Property Agents and Motor Dealers Act 2000</i> .	25 26
<i>prescribed conduct provision</i> —	27
(a) for motor dealing practice—see section 94; or	28
(b) for chattel auctioneering practice—see section 140.	29

<i>principal licensee</i> means a licensee who carries on business under the licensee’s licence on the licensee’s own behalf.	1 2
<i>registered office</i> , of a licensee, see section 70.	3
<i>registration certificate</i> means a certificate of registration as a motor salesperson issued under section 166.	4 5
<i>registration certificate register</i> see section 187(1).	6
<i>repairable write-off</i> means a motor vehicle recorded on a TORUM register as a repairable write-off.	7 8
<i>repair period</i> , for schedule 1, see schedule 1, section 12(2).	9
<i>repealed code of conduct</i> means—	10
(a) the code of conduct under the repealed <i>Property Agents and Motor Dealers (Motor Dealing Practice Code of Conduct) Regulation 2001</i> ; or	11 12 13
(b) the code of conduct under the repealed <i>Property Agents and Motor Dealers (Auctioneering Practice Code of Conduct) Regulation 2001</i> .	14 15 16
<i>representation</i> includes a statement, promise, publication and other representation made in any way.	17 18
<i>respondent</i> , for part 8, see section 204.	19
<i>responsible licensee</i> —	20
(a) for part 3, division 5—see section 96(2); or	21
(b) for part 4, division 5—see section 142(2).	22
<i>reward</i> includes remuneration of any kind, including, for example, any fee, commission or gain.	23 24
<i>sale by auction</i> , of a used motor vehicle or other goods, see section 13.	25 26
<i>sell</i> includes agree to sell, advertise or display for sale, attempt to sell, have for sale, negotiate for a sale, and in any way be concerned in selling.	27 28 29
<i>selling agent</i> —	30
(a) for part 3, division 5—see section 96(1); or	31
(b) for part 4, division 5—see section 142(1).	32

<i>serious offence</i> means any of the following offences punishable by 3 or more years imprisonment—	1 2
(a) an offence involving fraud or dishonesty;	3
(b) an offence involving the trafficking of drugs;	4
(c) an offence involving the use or threatened use of violence;	5 6
(d) an offence of a sexual nature;	7
(e) extortion;	8
(f) arson;	9
(g) unlawful stalking.	10
<i>single appointment</i> —	11
(a) for part 3, division 3, see section 81(2)(a); or	12
(b) for part 4, division 3, see section 125(3)(a).	13
<i>statutory warranty</i> see schedule 1, section 1.	14
<i>statutory write-off</i> means a motor vehicle recorded on a TORUM register as a statutory write-off.	15 16
<i>time of taking possession</i> , for schedule 1, see schedule 1, section 1.	17 18
<i>TORUM register</i> means a register kept under a regulation under the <i>Transport Operations (Road Use Management) Act 1995</i> .	19 20 21
<i>trust account</i> , means a trust account required to be kept under section 191.	22 23
<i>unwarranted vehicle</i> means a used motor vehicle that does not have a statutory warranty.	24 25
<i>used imported vehicle</i> means a motor vehicle that—	26
(a) has been imported into Australia under the <i>Motor Vehicle Standards Act 1989</i> (Cwlth); and	27 28
(b) is intended to be used in transport in Australia within the meaning of that Act;	29 30

Schedule 4

- but does not include a motor vehicle that has been supplied to
the market in full volume in Australia within the meaning of
that Act and the *Motor Vehicle Standards Regulations 1989*
(Cwlth).
- used motor vehicle***—
- (a) generally, means—
- (i) a motor vehicle that has, at any time, been licensed
or registered, whether under a law of this State or
another State; or
- (ii) a motor vehicle that, had it not been registered as
mentioned in subparagraph (i) for use for
demonstration or sales promotion, would have
been a new motor vehicle; or
- (iii) a used imported vehicle; or
- (b) for part 3, division 6, see section 98.
- warranted vehicle*** see schedule 1, section 3.
- warrantor***, for schedule 1, see schedule 1, section 1.
- warranty advice***, for schedule 1, see schedule 1, section 11(2).
- warranty period***, for schedule 1, see schedule 1, section 4.
- written-off vehicle*** means a motor vehicle recorded on a
TORUM register as—
- (a) a repairable write-off; or
- (b) a statutory write-off.

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