



Queensland

# **Agents Financial Administration Bill 2014**

**Includes amendments agreed during Consideration**





Queensland

# Agents Financial Administration Bill 2014

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# 2014

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## A Bill

for

**An Act to provide for the administration of trust accounts held by agents regulated under the *Debt Collectors (Field Agents and Collection Agents) Act 2014*, the *Motor Dealers and Chattel Auctioneers Act 2014* and the *Property Occupations Act 2014*, to establish a claim fund to compensate persons in particular circumstances for financial loss arising from dealings with agents, and for related purposes**

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## The Parliament of Queensland enacts—

# Part 1 Preliminary

## Division 1 Introduction

### 1 Short title

This Act may be cited as the *Agents Financial Administration Act 2014*.

### 2 Commencement

This Act commences on a day to be fixed by proclamation.

### 3 Act binds all persons

- (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.
- (2) Nothing in this Act makes the State, the Commonwealth or any other State liable to be prosecuted for an offence.

### 4 Exemption—public officials

- (1) This Act does not apply to a prescribed officer for trust moneys for which the prescribed officer is responsible, if another Act makes provision for the way the prescribed officer is required to deal with moneys held by the officer in trust.
- (2) In this section—  
*prescribed officer* means—

- (a) an accountable officer under the *Financial Accountability Act 2009*; or
- (b) a public service officer.

## **5 Relationship with Fair Trading Inspectors Act 2014**

- (1) The *Fair Trading Inspectors Act 2014* (the **FTI Act**) enacts common provisions for this Act and particular other Acts about fair trading.
- (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 has under this Act.

## **Division 2 Object**

### **6 Main object**

- (1) The main object of this Act is to protect consumers from financial loss in dealings with agents regulated under an Agents Act.
- (2) The object is to be achieved mainly by—
  - (a) regulating the way agents establish, manage and audit trust accounts; and
  - (b) establishing a claim fund to compensate persons in particular circumstances for financial loss arising from dealings with agents; and
  - (c) promoting administrative efficiency for claims made against the claim fund.

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## **Division 3                      Interpretation**

### **7                      Definitions**

The dictionary in schedule 1 defines particular words used in this Act.

### **8                      Meaning of *agent***

An *agent* is a person who is either or both of the following—

- (a) a licensee;
- (b) a collection agent.

## **Part 2                      Trust accounts**

### **Division 1                      Opening and keeping trust accounts**

#### **9                      Who may open trust account**

A person must not open an account purporting to be a general trust account or special trust account under this part unless the person is a principal agent.

Maximum penalty—200 penalty units.

#### **10                      Application and grant of authority to open a trust account—collection agents**

- (1) Before opening a trust account under this part, a collection agent must apply, in the approved form, to the chief executive for an authority to open the account.

Maximum penalty—200 penalty units.

- 
- (2) The application must be accompanied by the amount required for obtaining a criminal history report about the collection agent under the *Debt Collectors (Field Agents and Collection Agents) Act 2014*, section 106.
  - (3) The chief executive must decide to grant the authority if the chief executive considers the applicant is a suitable person to open a trust account.
  - (4) In considering whether an applicant is a suitable person to open a trust account, the chief executive must have regard to the matters relating to the suitability of the applicant to perform a debt collection activity under the *Debt Collectors (Field Agents and Collection Agents) Act 2014*, as stated in section 102 or 103 of that Act.
  - (5) The chief executive must—
    - (a) give the applicant written notice of the chief executive's decision about the application; and
    - (b) if the decision is to refuse the application—give the applicant an information notice complying with the QCAT Act, section 157(2) for the decision.
  - (6) If the chief executive decides to refuse the application, the applicant can not make another application under this section for 3 months after the day the chief executive gives the applicant the information notice under subsection (5)(b) for the decision.
  - (7) However, subsection (6) does not apply if—
    - (a) the applicant is a corporation; and
    - (b) the applicant 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 applicant corporation; and
      - (ii) no person who was in a position to control or influence the affairs of the corporation when the
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refused application was made is in a position to control or influence the affairs of the applicant corporation.

## **11 Requirements for opening and keeping trust accounts**

- (1) An agent must not open a general trust account or special trust account at a place other than the office or branch of an approved financial institution within the State.

Maximum penalty—200 penalty units.

*Note—*

A special trust account is a trust account created under section 17 in which an amount is held for investment at the direction of both parties to a sale.

- (2) Before opening a general trust account or special trust account the agent must give the manager or other officer in charge of the financial institution's office or branch—
- (a) if the person is a licensee—a copy of the licensee's licence; or
  - (b) if the person is a collection agent—a copy of the collection agent's authority to open the account granted under section 10.

Maximum penalty—200 penalty units.

- (3) Subsection (4) applies if—
- (a) a collection agent who is not a licensee keeps a general trust account at a financial institution under this part; and
  - (b) the collection agent becomes a licensee; and
  - (c) the collection agent intends to continue using the agent's existing general trust account for transactions carried out under the licence.
- (4) The agent must, within 7 days after receiving the licence, give the manager or other officer in charge of the financial institution's office or branch a copy of the licence.



Maximum penalty—200 penalty units.

## **12 Account's name**

- (1) An agent opening a general trust account must ensure the account's name includes the words 'trust account'.

Maximum penalty—200 penalty units.

- (2) A licensee opening a special trust account must ensure the account's name includes the words 'special trust account'.

Maximum penalty—200 penalty units.

## **13 Notice of account's opening, closing or name change**

- (1) This section applies if an agent does any of the following (each an *event*)—

- (a) opens a general trust account;
- (b) if the agent is a property agent—opens a special trust account;
- (c) changes the name of a general trust account or special trust account;
- (d) closes a general trust account or special trust account.

- (2) The agent must give the chief executive written notice under subsection (3) of the happening of the event within 2 months of its happening.

Maximum penalty—200 penalty units.

- (3) The written notice must state—

- (a) whether the account is a general trust account or special trust account; and
- (b) the name of the financial institution where the account is or was kept; and
- (c) the account name; and

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- (d) the identifying number of the financial institution; and

*Note—*

This is commonly referred to as the bank state branch number (BSB).

- (e) the account number.

## **14 Agreements with financial institutions**

- (1) The chief executive may enter into an agreement for the State with a financial institution about the keeping of general trust accounts by agents.
- (2) The chief executive may enter into an agreement only with the Minister's approval.
- (3) The agreement may provide for the following things—
  - (a) payment of interest on the whole or part of amounts held in agents' general trust accounts to the consolidated fund;
  - (b) informing the chief executive of amounts held in agents' general trust accounts;
  - (c) auditing agents' general trust accounts;
  - (d) other things concerning agents' general trust accounts.
- (4) A financial institution may pay interest to the consolidated fund under an agreement.

## **Division 2 Payments to trust accounts**

### **15 Application of ss 16 and 17**

- (1) Sections 16 and 17 apply if an amount is received by an agent—
  - (a) for a transaction; or
  - (b) with a written direction for its use.

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*Example of paragraph (b)—*

an amount received by a property agent with a written direction to use it for advertising or marketing by the property agent or another person

(2) In this section—

**amount**, received by an agent for a transaction—

- (a) includes deposit and purchase monies for the transaction; but
- (b) does not include an amount payable to the agent for the transaction in refund of an expense the agent was authorised to incur and did incur and for which the agent holds a receipt.

## 16 Dealing with amount on receipt

An agent must, before the end of the first business day after receiving the amount—

- (a) pay it to the agent's general trust account; or

*Example—*

A licensee who collects an amount of rent for a property owner must pay the amount to the licensee's general trust account before the money can be paid from the account under section 22.

- (b) if section 17(1) applies, invest it under section 17(2).

Maximum penalty—200 penalty units or 2 years imprisonment.

## 17 Investments—property agents

- (1) A property agent under the *Property Occupations Act 2014* may invest an amount under subsection (2) if—

- (a) the agent receives the amount for a sale; and
- (b) the sale is to be completed on a day that is—
  - (i) stated in the contract or ascertainable on the day the contract is entered into; and

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- (ii) more than 60 days after the amount is received;  
and
  - (c) the amount is received with a direction from all parties to the sale that it be invested.
- (2) The agent must pay the amount as required by the direction to a special trust account with a branch of a financial institution within the State operated for the investment of the amount.

Maximum penalty for subsection (2)—200 penalty units or 2 years imprisonment.

## **18 No other payments to trust account**

- (1) An agent must not pay to a trust account an amount other than an amount that must be paid to the account under section 16 or 17.

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

- (2) However, if the agent receives an amount consisting of trust money and other money (the *non-trust money*) that can not be divided, the agent must—
  - (a) pay the whole amount to the agent's general trust account; and
  - (b) draw the non-trust money from the account within 14 days after the money becomes available for drawing.

*Example of amount consisting of trust money and non-trust money—*

A property agent receives a single cheque for rent and services provided by the property agent, including, for example, television rental.

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

## **19 Multiple trust accounts not required**

- (1) A licensee who holds more than 1 licence is not required to keep a general trust account for each licence.

- 
- (2) Also, a collection agent who holds 1 or more licenses is only required to keep 1 general trust account for activities performed as a collection agent and activities performed under the agent's licence.

## **20 Trust money not available to agent's creditors**

An amount paid, or required to be paid, to a trust account under this division can not be—

- (a) used for payment of the debt of a creditor of an agent; or
- (b) attached or taken in execution under a court order or process by a creditor.

## **Division 3 Payments from trust accounts**

### **21 When payments may be made from trust accounts**

- (1) An amount paid to a trust account must be kept in the account until it is paid out under this Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) An amount may be paid from a trust account only in a way permitted under this Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

### **22 Permitted drawings from trust accounts**

- (1) An agent may draw an amount from the agent's trust account to pay the agent's transaction fee or transaction expenses for a transaction only if—

- (a) the amount is drawn against the transaction fund for the transaction; and
- (b) the agent is authorised to draw the amount under this section.

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Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) The agent is authorised to draw an amount from the transaction fund to pay a transaction expense when the expense becomes payable.
- (3) After the transaction is finalised, the agent is authorised—
  - (a) to draw an amount from the transaction fund to pay the person entitled to the amount, or someone else in accordance with the person's written direction, that is equal to the difference between—
    - (i) the balance of the transaction fund; and
    - (ii) the total of the agent's transaction fee and any outstanding transaction expense; and
  - (b) after the amount, if any, mentioned in paragraph (a) has been paid—to draw the agent's transaction fee from the transaction fund.

*Example of when a transaction is finalised—*

the settlement of a contract for the sale of property or the termination of the contract

- (4) For subsection (3)(a) or (b), if a dispute about the transaction fund arises, the transaction is not taken to be finalised until the agent is authorised to pay out the transaction fund under section 26.
- (5) The agent must pay an amount mentioned in subsection (3)(a) to the person entitled to it, or someone else in accordance with the person's written direction—
  - (a) if the person asks, in writing, for the balance—within 14 days after receiving the request; or
  - (b) if the person has not asked, in writing, for the balance—within 42 days after the transaction is finalised.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (6) In this section—

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*transaction expense* means an expense an agent is authorised to incur in connection with the performance of the agent's activities for a transaction.

*transaction fee* means fees, charges and commission payable for the performance of an agent's activities for a transaction.

*transaction fund* means an amount held in an agent's trust account for a transaction.

## **Division 4            Other trust account obligations**

### **23            Accounting to clients**

- (1) An agent must account as required under this section to a client who appoints the agent to perform an activity, for all amounts received for a transaction, including an amount mentioned in subsection (2)(c).

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) The account must be in writing and state—
- (a) the amounts received for the transaction; and
  - (b) how the amounts were or are to be paid out; and
  - (c) the source and the amount of any rebate, discount, commission or benefit the agent received—
    - (i) for any expenses the agent incurred for the client in connection with the performance of a service; or
    - (ii) for referring the client to someone else for services relating to the transaction.
- (3) The agent must give the client the account—
- (a) if the client asks, in writing, for the account—within 14 days after receiving the request; or
  - (b) if the client has not asked, in writing, for the account—within 42 days after the transaction is finalised.

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## **24 Duties of financial institution managers**

- (1) The manager or principal officer of an office or branch of a financial institution where trust money has been deposited, whether to a trust account or another account, must—
  - (a) allow an inspector, on written demand signed by the inspector, to inspect and copy documents relating to the account; and
  - (b) immediately an agent's trust account is overdrawn, inform the chief executive of that fact; and
  - (c) immediately there is insufficient money in an agent's trust account to meet a cheque drawn on the account, inform the chief executive of—
    - (i) the amount for which the cheque is drawn; and
    - (ii) the amount in the account.

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

- (2) In this section—

*agent* includes—

- (a) a former agent; and
- (b) a person who is not licensed, but who acts as a licensee.

*trust money* includes—

- (a) an amount that, under section 16, is required to be deposited to an agent's trust account; and
- (b) an instrument for the payment of an amount mentioned in paragraph (a) if the instrument may be paid into a financial institution; and
- (c) a security for an amount mentioned in paragraph (a) if title to the security is transferable by delivery.



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## **Division 5                      Disputes about trust money**

### **25            Application of div 5**

- (1) This division applies if—
- (a) an agent holds a transaction fund for a transaction under section 22; and
  - (b) before the transaction fund is paid out under section 22, the agent receives written notice from a party to the transaction that ownership of the fund or part of the fund is in dispute (the *amount in dispute*).
- (2) In this section—
- party*, to a transaction, does not include an agent acting for a party to the transaction.

### **26            When amount in dispute may be paid**

The agent must not pay out the amount in dispute unless the agent—

- (a) receives written notice—
  - (i) from all parties to the transaction stating the person who is entitled to the amount in dispute; or
  - (ii) a legal proceeding has been started in a court to decide who is entitled to the amount in dispute; or
- (b) pays the amount under section 28(3).

Maximum penalty—200 penalty units or 2 years imprisonment.

### **27            Where amount must be paid if notice given**

The agent must pay the amount in dispute immediately—

- (a) if notice under section 26(a)(i) is received—to the person stated to be entitled to the amount or in accordance with the person's direction; or

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- (b) if notice under section 26(a)(ii) is received—to the court in which the proceeding was started.

Maximum penalty—200 penalty units or 2 years imprisonment.

## **28 Dealing with amount if no notice**

- (1) This section applies if the agent does not receive a notice under section 26 within 30 days after receiving notice of the dispute.
- (2) The agent must, within 7 days after the end of the 30 day period, give all parties to the transaction a written notice stating that—
  - (a) the agent will, within 30 days after the notice is given, pay the amount in dispute to a stated person whom the agent believes is entitled to receive it if the agent has not received a notice under section 26; or
  - (b) the agent can not decide who is entitled to the amount and is keeping it in the agent's trust account until the agent receives notice under section 26.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (3) The agent may pay the amount to the person stated in a notice given under subsection (2)(a) if, within 30 days after the notice is given, the agent does not receive a notice under section 26.

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## Part 3                      Audit requirements

### Division 1                  Preliminary

#### 29            Definition for pt 3

In this part—

*auditor* means a person who is—

- (a) registered as an auditor under the Corporations Act; or

*Note—*

See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers).

- (b) a member of CPA Australia who is entitled to use the letters ‘CPA’ or ‘FCPA’; or
- (c) a member of the Institute of Chartered Accountants in Australia who is entitled to use the letters ‘CA’ or ‘FCA’; or
- (d) a member of the Institute of Public Accountants who is entitled to use the letters ‘MIPA’ or ‘FIPA’.

### Division 2                  Provisions about auditors

#### 30            Agent must appoint auditor and notify chief executive

- (1) An agent must, within 1 month after opening a trust account, appoint an auditor to audit the trust account kept or to be kept by the agent.

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

- (2) The agent must, within 1 month after the appointment, give the chief executive—
  - (a) written notice of the auditor’s name and address; and

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- (b) evidence the auditor has accepted the appointment.  
Maximum penalty—200 penalty units.

### **31 Steps to be taken if auditor's appointment ends**

- (1) If an agent's auditor resigns or the agent ends the auditor's appointment, both the auditor and the agent must immediately notify the chief executive of—

- (a) the resignation or ending of the appointment; and
- (b) the reasons for it.

- (2) An auditor or agent who is required to give the chief executive notice under subsection (1) and fails to give the notice commits an offence.

Maximum penalty—200 penalty units.

- (3) The agent must appoint another auditor and, unless the agent has a reasonable excuse, within 1 month after the resignation or ending of the appointment mentioned in subsection (1) takes effect, give the chief executive—

- (a) written notice of the auditor's name and address; and
- (b) evidence the auditor has accepted the appointment.

Maximum penalty—200 penalty units.

- (4) If an agent's auditor dies, the agent must—

- (a) as soon as practicable after the agent becomes aware of the death, notify the chief executive of the death; and
- (b) unless the agent has a reasonable excuse, within 1 month after becoming aware of the death, appoint another auditor and give the chief executive—
  - (i) written notice of the auditor's name and address; and
  - (ii) evidence the auditor has accepted the appointment.

Maximum penalty—200 penalty units.

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**32 Chief executive may make information available to supervisory bodies**

- (1) The chief executive may report a matter about an auditor to ASIC or a prescribed entity of which the auditor is a member if the chief executive believes, on reasonable grounds, the auditor—
  - (a) has not audited an agent’s trust accounts in accordance with generally accepted standards of professional competency; or
  - (b) has failed to detect or report material irregularities in the operation of an agent’s trust accounts; or
  - (c) has not properly performed the auditor’s functions under this Act.
- (2) The chief executive may make information in the chief executive’s possession available to the commission or entity for an investigation conducted by the commission or entity.
- (3) In this section—

*prescribed entity* means CPA Australia, the Institute of Chartered Accountants in Australia or the Institute of Public Accountants.

**Division 3                      Audit of trust accounts**

**33 Definitions for div 3**

In this division—

*agent* includes a person who is an agent at the start of an audit period, even if the person stops being an agent before the end of the audit period.

*audit month*, for an agent, means—

- (a) if the agent is a licensee—
  - (i) the eighth month after the month in which the licence was first issued to the licensee and the same month in each subsequent year; or

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- (ii) another month stated by the chief executive in a written notice given to the licensee; or

*Example of paragraph (a)(i)—*

If a licensee's licence was first issued to the licensee in January, the audit month for the licensee's licence is September.

- (b) if the agent is a collection agent—the month of June.

***audit period*** means—

- (a) the 12 month period in each year ending on the last day of the audit month; or
- (b) another period decided by the chief executive, either generally by gazette notice, or by written notice given to an agent.

***audit report***, for an agent, means a report from the agent's auditor under section 40.

***trust account*** means a general trust account or a special trust account.

### **34 What trust accounts must be audited**

- (1) An agent's trust accounts must be audited for each audit period during which the agent carried on business as an agent and operated a trust account.
- (2) An agent's trust accounts need not be audited for an audit period if the agent gives the chief executive a statutory declaration that the agent did not operate a trust account during the period.

### **35 Time for audit**

- (1) This section applies to an agent for each audit period for which the agent's trust accounts must be audited.
- (2) The agent must, within 4 months after the last day of the audit month in each year or the extended period allowed by the chief executive under subsection (3)—

- (a) have the agent's trust accounts for the last audit period audited by the person's auditor; and
- (b) file the agent's signed original audit report with the chief executive.

Maximum penalty—200 penalty units or 2 years imprisonment.

*Note—*

The auditor must give the agent a signed original audit report under section 40 (Audit reports).

- (3) The chief executive may extend the time mentioned in subsection (2) if the agent or the agent's auditor applies in writing to the chief executive for the extension.
- (4) The application must state the grounds on which the extension is sought.
- (5) If the agent is charged with an offence relating to a failure to file an audit report, it does not matter that the contravention happened without the agent's authority or contrary to the agent's instructions.

## **36 Auditors—functions**

- (1) An auditor has the following functions under this division—
  - (a) to inspect and audit, in each audit period, the trust accounts of each agent by whom the auditor is engaged;
  - (b) to make an audit report for the agent for the audit period;
  - (c) if the agent is an agent for the whole of the audit period—to make 2 unannounced examinations of the agent's trust accounts during the audit period;
  - (d) if the agent is an agent for less than the whole audit period, but more than 6 months of the period—to make 1 unannounced examination of the agent's trust accounts during the audit period.

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- (2) An auditor must not make an unannounced examination of an agent's trust accounts within 2 months after the last day of the audit period or another unannounced examination.

### **37 Auditor's advice to chief executive**

An auditor must immediately give written notice to the chief executive if the auditor—

- (a) can not report that a trust account has been satisfactorily kept under this Act; or
- (b) finds, on an unannounced examination of an agent's trust accounts, an irregularity relating to an account that ought to be brought to the chief executive's notice.

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

### **38 Auditor may ask agent to produce other accounts**

- (1) This section applies if an auditor considers, to enable the auditor to decide whether an agent's trust accounts have been satisfactorily kept under this Act, it is necessary—
  - (a) to examine a general account of the agent; or
  - (b) to be given information about the accounts.
- (2) The auditor may ask the agent to produce the general account or give the information.
- (3) If the agent refuses, the auditor must immediately give written notice to the chief executive.

Maximum penalty for subsection (3)—200 penalty units or 1 year's imprisonment.

### **39 Audit on ceasing to be principal agent**

- (1) This section applies if—
  - (a) an agent keeps a trust account; and
  - (b) the agent stops being a principal agent.



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*Example—*

An agent who is a licensee stops being a principal agent if the licensee stops carrying on business under the licensee's licence on the licensee's own behalf.

- (2) The agent must, within 2 months after the agent stops being a principal agent—
  - (a) have the agent's trust accounts audited by the agent's auditor for the period—
    - (i) starting on the day immediately after the end of the period covered by the last audit of the trust accounts or, if the trust accounts have not previously been audited, the day on which the agent was first required to keep trust accounts; and
    - (ii) ending on the day the person stops being a principal agent; and
  - (b) file the auditor's signed original audit report with the chief executive.

Maximum penalty—200 penalty units or 2 years imprisonment.

## **40 Audit reports**

- (1) An auditor who audits an agent's trust accounts must give the agent an original signed audit report under this section.

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

- (2) The auditor must include the following in the report—
  - (a) the following details—
    - (i) the auditor's name;
    - (ii) the prescribed entity of which the auditor is a member;
    - (iii) the auditor's membership number issued by the prescribed entity;
  - (b) the audit period for which the report is made;

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- (c) the name and number of each trust account audited;
- (d) the name of the financial institution, the office or branch of the institution where each trust account was kept and the identifying number of the office or branch;
- (e) the agent's name;
- (f) if the agent is an individual who holds a licence—the agent's licence number;
- (g) for a corporation—
  - (i) if the corporation is a licensee—the corporation's licence number; and
  - (ii) the licence number of each licensee in charge of the corporation's business; and
  - (iii) the name of each agent in charge of the corporation's business during the audit period;
- (h) if the agent carried on business under a registered business name—the business name and the names of any persons with whom the agent carried on the business;
- (i) each place where the agent carried on business as an agent;
- (j) a statement about whether each trust account has been satisfactorily kept under this Act;
- (k) a statement specifying the day and result of each unannounced examination for the audit period under section 36(1);
- (l) a statement about whether the auditor has audited the agent's general account;
- (m) if a trust account has been overdrawn, the following details—
  - (i) the name of the overdrawn account;
  - (ii) the date and amount of each overdraw;
  - (iii) any reason given by the agent for each overdraw;

- (iv) if an overdraft was corrected, the date of the correction;
- (n) if a trust creditor's ledger account has been overdrawn, the following details—
  - (i) the name of the trust creditor;
  - (ii) the date and amount of each overdraft;
  - (iii) any reason given by the agent for each overdraft;
  - (iv) if an overdraft was corrected, the date of the correction;
- (o) a statement about whether, for each month during the audit period—
  - (i) each trust account cash book was reconciled with the bank balance and trust ledger; and
  - (ii) an analysis was made showing the name of each person for whom an amount was held and the amount held for each person;
- (p) the serial numbers of the trust receipts used during the audit period and any unused trust receipts produced to the auditor;
- (q) if an amount has been held in trust for more than 3 months by the agent at the last day of the audit period, the particulars for each amount, including—
  - (i) any reason given by the agent for holding the amount for more than 3 months; and
  - (ii) whether the amounts have been dispersed before the day the report is given;
- (r) a statement that each trust account cash book has been reconciled with the bank balance of the trust account at the last day of the audit period;
- (s) a copy of the reconciliation of the trust account cash book and the bank balance of the trust account at the last day of the audit period containing the particulars prescribed under a regulation for this paragraph;

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- (t) if the agent used software in connection with keeping the trust account—the name and version number of the software;
- (u) a statement about anything else about a trust account audited that the auditor considers should be reported to the chief executive.

## **Part 4**                      **Directions about trust accounts and appointing receivers and special investigators**

### **Division 1**                      **Definitions**

#### **41**            **Definitions for pt 4**

In this part—

***account*** means—

- (a) a trust account in an agent’s name with a financial institution; or
- (b) an account in the agent’s name or in which the agent has an interest with a financial institution; or
- (c) another account to which trust money is deposited.

***agent*** includes a former agent and the personal representative of a deceased agent.

***defalcation*** means the stealing, or embezzlement, omitting to account, misappropriation or misapplication of, or another act about, property punishable by imprisonment.

***money*** includes—

- (a) an instrument for the payment of an amount if the instrument may be paid to a financial institution; and

- 
- (b) security for money if title to the security is transferable by delivery.

*trust property*, for an agent—

- (a) means—
  - (i) property received by the agent in trust that has not been given to the person entitled to it or someone else under the person's direction or according to law; or
  - (ii) property that, except for the appointment of a receiver, would be receivable for another person by the agent in trust after the receiver's appointment; or
  - (iii) trust money; and
- (b) includes computer hardware, software and discs, ledgers, books of account, vouchers, records, deeds, files and other documents used in connection with something mentioned in paragraph (a).

## **Division 2                      Giving directions about agents' accounts**

### **42            Chief executive may give directions about agent's accounts in particular cases**

- (1) The chief executive may decide to give a direction under subsection (2) if the chief executive believes, on reasonable grounds—
  - (a) any of the following persons has, or may have, stolen or misappropriated or misapplied trust money—
    - (i) an agent;
    - (ii) the person in charge of an agent's business;
    - (iii) an employee of an agent; or
  - (b) an agent has abandoned the agent's business.

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- (2) The chief executive may direct, by signed writing—
  - (a) if a claim has been made against the fund for the trust money—that all or part of the amount to the credit of a stated account be paid to the chief executive; or
  - (b) that an amount must not be drawn from a stated account other than with the chief executive’s written approval; or
  - (c) that a stated account may be operated only under stated conditions.
- (3) The direction must—
  - (a) be given to each holder of the account and the financial institution where the account is kept; and
  - (b) state the account to which it relates; and
  - (c) if it includes a direction under subsection (2)(c), state the conditions under which the account may be operated.
- (4) If an amount is paid to the chief executive under subsection (2)(a), the chief executive must pay the amount to the consolidated fund.

**43 Account not to be operated unless chief executive allows**

- (1) This section applies if the chief executive gives a direction under section 42(1).
- (2) After the direction has been given to the holder of the account, and until it is withdrawn, the holder must not sign a cheque or other instrument drawn on the account unless the cheque or other instrument has first been signed by the chief executive or a person authorised by the chief executive to sign the cheque or instrument.

Maximum penalty—200 penalty units or 2 years imprisonment.

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**44 Financial institution must comply with direction**

- (1) After a direction has been given to a financial institution under section 42(2), and until it is withdrawn, the financial institution must not—
  - (a) pay a cheque or other instrument drawn on the account stated in the direction unless the cheque or instrument is also signed by the chief executive; or
  - (b) give effect to another transaction on the account that is not authorised because of the direction.

Maximum penalty—

- (a) for an individual guilty of an offence under chapter 2 of the Criminal Code—200 penalty units or 1 year's imprisonment; or
  - (b) for a corporation—1000 penalty units.
- (2) Subsection (1) applies whether or not a copy of the direction has been given to anyone else.
  - (3) For section 42(2)(b), the chief executive's signature on the cheque or other instrument is sufficient evidence of the chief executive's approval to draw an amount from the account to honour the cheque or other instrument.
  - (4) A manager or principal officer in charge of an office or branch of the financial institution where the account is kept, or another officer of the financial institution, must not knowingly contravene this section.

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

- (5) A person to whom a direction is given does not incur a civil liability to another only because the person complies with the direction.

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**45 Person may ask QCAT to review chief executive's decision**

- (1) A person who is dissatisfied with a decision of the chief executive made under section 42(1) may apply to QCAT to have the decision reviewed.
- (2) QCAT can not stay the operation of the decision under the QCAT Act, section 22(3).

**46 Withdrawal of direction**

- (1) The chief executive may withdraw a direction given under section 42 at any time.
- (2) If the direction is withdrawn, the chief executive must immediately give all persons who were given the direction a notice that the direction has been withdrawn.
- (3) A direction stops having effect when the notice is given.

**Division 3 Receivers**

**Subdivision 1 Appointment**

**47 When receiver may be appointed**

- (1) If the chief executive believes, on reasonable grounds, defalcation has, or may have, been committed in relation to an agent's trust account, the chief executive may appoint a receiver if—
  - (a) the agent consents to the appointment; or
  - (b) the chief executive—
    - (i) gives the agent written notice—
      - (A) stating the chief executive proposes to appoint a receiver on the ground that defalcation has, or may have, been



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- committed in relation to the agent's trust account; and
- (B) outlining the facts and circumstances forming the basis for the ground; and
  - (C) inviting the agent to show, in writing, within a stated time of at least 21 days, why the appointment should not be made; and
- (ii) after considering any written representations given within the stated time, still considers the ground exists.

*Note—*

Under the *Judicial Review Act 1991*, part 4, a person aggrieved by an administrative decision of the chief executive can ask the chief executive to give a written statement of reasons for the decision, if they are not given. See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision) for what the chief executive must set out in the reasons.

- (2) The chief executive may immediately appoint a receiver if the chief executive believes, on reasonable grounds, a person can not obtain payment or delivery of trust property held for the person by an agent because of—
- (a) the agent's mental or physical infirmity; or
  - (b) the agent's death; or
  - (c) the abandonment of the agent's business; or
  - (d) if the agent is a licensee—
    - (i) the agent's disqualification from holding a licence; or
    - (ii) the cancellation or suspension of the agent's licence; or
    - (iii) a refusal to renew the agent's licence; or
    - (iv) the expiry of the agent's licence.

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#### **48 Trust property over which receiver may be appointed**

A receiver may be appointed over trust property—

- (a) held by an agent; or
- (b) held by another person for an agent; or
- (c) recoverable by an agent; or
- (d) if an agent is dead, that may be recoverable by the agent's personal representative.

#### **49 Who may be appointed**

- (1) The chief executive may appoint a person as a receiver only if satisfied the person is appropriately qualified to perform a receiver's functions.
- (2) A person may be appointed as a receiver and a special investigator over the same trust property.

*Note—*

See section 70 (Appointment of special investigator).

#### **50 How receivers are appointed**

- (1) The chief executive must appoint a receiver by signed notice.
- (2) The notice must state the trust property (*receivership property*) over which the receiver is appointed.
- (3) The appointment takes effect when the notice is signed.
- (4) The chief executive must give a copy of the notice to the agent and the receiver as soon as practicable after the signing of the notice.
- (5) If the agent is a corporation, the agent must give notice of the appointment to each person who was an executive officer of the corporation at the time the event giving rise to the appointment happened, unless the agent has a reasonable excuse.

Maximum penalty for subsection (5)—

- 
- (a) for an individual guilty of an offence under chapter 2 of the Criminal Code—100 penalty units; or
  - (b) for a corporation—500 penalty units.

## **Subdivision 2 Receiver's functions and powers**

### **51 Receivers—functions**

- (1) A receiver appointed under this division has the following functions—
  - (a) to take possession of receivership property;
  - (b) to manage receivership property;
  - (c) to receive claims against receivership property;
  - (d) if the agent held receivership property in trust—
    - (i) to identify the person or persons who have the right to it; and
    - (ii) to distribute it under this division;
  - (e) to identify any defalcation that has, or may have, been committed;
  - (f) to report to the chief executive about the receivership.
- (2) In carrying out its functions, the receiver must comply with parts 2 and 3 as if a reference in those parts to the agent were a reference to the receiver.

### **52 Requiring information**

- (1) A receiver may ask a person to give the receiver information or documents the receiver reasonably requires about receivership property.
- (2) The person must give the receiver the information or documents, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

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- (3) It is a reasonable excuse for a person not to give information or documents to a receiver if doing so might tend to incriminate the person.

### **53 Possession of receivership property**

- (1) A receiver may take or enter into possession of receivership property.
- (2) As soon as practicable after taking or entering into possession of receivership property, the receiver must give a receipt for it to the person from whom the property was taken or who held possession of the property.
- (3) The receiver must allow a person who would be entitled to the receivership property if it were not in the receiver's possession—
  - (a) to inspect it; or
  - (b) if it is a document, to take a copy of it.
- (4) The receiver must return receivership property the receiver is satisfied is not required for the receivership to the agent or other person who has the right to it.
- (5) The receiver may take or enter into possession of receivership property under subsection (1) despite a lien or other security over it claimed by another person.
- (6) However, the taking or entry into possession does not affect the person's claim to the lien or other security against a person other than the receiver.

### **54 Orders for possession of receivership property**

- (1) This section applies if—
  - (a) a receiver requires a person in possession of receivership property to give possession of it to the receiver; and
  - (b) the person does not comply with the requirement.
- (2) The receiver may apply to a court having jurisdiction for the recovery of debts up to the amount or value of the

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receivership property for an order for possession of the property.

- (3) On the application, the court may make any order it considers appropriate.

## **55 Enforcing orders**

- (1) This section applies if—
- (a) a court makes an order under section 54 for possession of receivership property against a person; and
  - (b) the person has been given a copy of the order; and
  - (c) the person has not complied with the order.
- (2) The court may make an order authorising a police officer, or the receiver or another person and a police officer—
- (a) to enter stated premises or another place occupied by the person and search for the receivership property; and
  - (b) to seize the receivership property and move it to a place the receiver considers appropriate.
- (3) The court may also make another order it considers appropriate.

## **56 Improperly withdrawing, destroying or concealing receivership property**

A person must not—

- (a) withdraw an amount or make a payment from an account with intent to defeat a receiver's functions; or
- (b) destroy, conceal, move from 1 place to another place, give to another or place under another's control receivership property over which a receiver has been appointed.

Maximum penalty—200 penalty units or 2 years imprisonment.

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## **57 Dealing with receivership property**

- (1) A receiver may deal with receivership property in the same way as the agent may have lawfully dealt with the property.
- (2) Without limiting subsection (1), the receiver may do the following—
  - (a) if the agent had no general trust account, open a general trust account;
  - (b) claim or receive a debt owing to the agent in connection with the receivership property;
  - (c) start or defend a proceeding concerning the receivership property for the agent;
  - (d) engage a legal representative or other representative to give advice;
  - (e) engage employees or representatives to help the receiver carry out the receiver's functions;
  - (f) if the agent had power to sell or require the sale of the receivership property, sell or require the sale of the property.

## **58 Obstructing receivers**

A person must not obstruct a receiver in the performance of the receiver's functions or the exercise of the receiver's powers under this subdivision.

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

## **Subdivision 3 Distributing receivership property**

### **59 Notice to claimants against receivership property**

- (1) The receiver must give notice to persons who may have a claim against receivership property.
- (2) The notice may be given—

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- (a) by post; or
  - (b) by newspaper advertisement; or
  - (c) in another way the receiver reasonably thinks will bring the notice to the attention of persons who may have a claim to the receivership property.
- (3) The notice must state a time, at least 1 month after the notice is given, for particulars and grounds of a claim against the receivership property to be given to the receiver.
  - (4) A claim made by a person (a *claimant*) against receivership property must state—
    - (a) the event alleged to give rise to the claim; and
    - (b) when the event happened; and
    - (c) if the claimant was not immediately aware that the claimant suffered financial loss because of the event, when the claimant became aware of the financial loss; and
    - (d) all relevant particulars about the event and the financial loss; and
    - (e) the claimant's estimated financial loss.
  - (5) The claim is taken to have been made on the day it is given to the receiver even though the claimant is unable to state all of the particulars mentioned in subsection (4).
  - (6) The receiver may require the claimant to verify the claim, or part of the claim.

*Example of verification—*

statutory declaration

## **60 Access to documents**

- (1) The receiver must give a person who wishes to claim against receivership property reasonable access to documents held by the receiver to allow particulars and grounds of the claim to be given.

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- (2) The receiver must give the access free of charge.

## **61 Deciding claims**

- (1) The receiver must—
  - (a) consider all claims against receivership property; and
  - (b) prepare a report stating the receiver’s opinion about whether each claim is allowable, and reasons for the receiver’s opinion (a *draft claims report*).
- (2) Before deciding a claim, the receiver must give the following to the agent and each person who has claimed against the receivership property (the *parties*)—
  - (a) a copy of the draft claims report;
  - (b) a written notice inviting the parties to give the receiver written comments about the draft claims report within 14 days after giving the notice.
- (3) If the receiver receives comments from a party, the receiver must provide each other party with a copy of the comments and invite the parties to give the receiver any further comments within 14 days after giving the notice.
- (4) The receiver must have regard to the following when deciding whether to allow claims—
  - (a) the parties’ comments given under subsection (3);
  - (b) information or a document given under section 52.
- (5) The receiver may refuse to allow a person’s claim against the receivership property if—
  - (a) the person was given notice under section 59; and
  - (b) particulars and grounds of the claim were not given within the time stated in the notice.
- (6) The receiver must refuse to allow a person’s claim against the receivership property if the receiver is satisfied the person does not have a lawful claim against the property.



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- (7) The receiver must prepare a report (a *final claims report*) that includes—
- (a) a copy of the draft claims report; and
  - (b) a copy of the parties' comments given under subsection (3); and
  - (c) the receiver's decision for each claim and reasons for the decision.

## **62 Payment of claims**

- (1) This section applies if the receiver has—
- (a) given notice under section 59(1); and
  - (b) complied with section 61.
- (2) The receiver may pay a claim allowed by the receiver only if the receivership property is enough to pay all claims allowed by the receiver.
- (3) If the receivership property is not enough to pay all of the allowed claims, the receiver—
- (a) may pay any part of the property that consists of money to the chief executive; and
  - (b) must give a copy of the final claims report prepared under section 61(7) to the chief executive.
- (4) Money paid to the chief executive under subsection (3) must be—
- (a) paid to the consolidated fund; and
  - (b) paid from the claim fund under section 63(3)(b).
- (5) In this section—  
*claim* does not include a claim by the agent.

## **63 Money not dealt with by receiver**

- (1) This section applies to receivership property consisting of money in the receiver's possession.

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- (2) The receiver must give the money to the chief executive if—
  - (a) the receiver has not dealt with it under this division; and
  - (b) the chief executive, by written notice, asks for it.
- (3) Money given to the chief executive under subsection (2) must be paid to the consolidated fund and be paid from the claim fund in the following order—
  - (a) to reimburse claims paid from the claim fund in relation to the agent;
  - (b) to pay unsatisfied claims against the claim fund in relation to the agent;
  - (c) to pay the remuneration and costs of a receiver appointed under section 47;
  - (d) to pay the remuneration and costs of a special investigator appointed under section 70;
  - (e) to pay claims by the agent against the money.

## **Subdivision 4      Recovery of receivers’ remuneration and costs**

### **64      Recovery of remuneration and costs**

- (1) The following persons are liable to reimburse the chief executive for an amount paid to a receiver, including an amount paid from the fund, for the receiver’s remuneration and costs—
  - (a) the agent in relation to whom the receiver was appointed;
  - (b) if the agent is a corporation, the executive officers of the corporation when the event for which the chief executive appointed the receiver happened.
- (2) If more than 1 person is liable to reimburse the chief executive, the liability of the persons is joint and several.

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- (3) The chief executive may recover an amount liable to be reimbursed under subsection (1) as a debt.
  - (4) Before taking action to recover the amount of the debt, the chief executive must give a letter of demand to each person liable to reimburse the chief executive, requiring the person to pay the amount to the chief executive within 1 month after receiving the letter.

## **Subdivision 5      Ending receivership**

### **65      Ending receiver's appointment**

A receiver's appointment ends if—

- (a) the receiver resigns by signed notice given to the chief executive; or
- (b) the receiver or the agent in relation to whom the receiver was appointed applies to the chief executive to end the appointment and the chief executive approves the application; or
- (c) the receiver dies; or
- (d) the chief executive ends the appointment by signed notice given to the receiver.

### **66      Dealing with receivership property when appointment ends**

- (1) This section applies to receivership property if—
  - (a) the receiver's appointment ends; and
  - (b) the chief executive has not asked for the property under section 63.
- (2) If, within 14 days after the end of the receiver's appointment, the chief executive appoints another person (the *new receiver*) to be the receiver in the former receiver's place, the former receiver must—

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- (a) give the receivership property to the new receiver as soon as reasonably practicable; or
- (b) if the chief executive gives the former receiver a direction about how to deal with the receivership property, comply with the direction.

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

- (3) If a new receiver is not appointed within the 14 days, the former receiver must give the receivership property to the agent or other person who has the right to it.

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

- (4) However, the chief executive may direct the former receiver to destroy or give to the chief executive a part of the receivership property consisting of documents if the documents have not been given to the person entitled to them.
- (5) The former receiver must comply with a direction under subsection (4), unless the former receiver has a reasonable excuse.

Maximum penalty for subsection (5)—200 penalty units or 1 year’s imprisonment.

## **67 Returns by receiver**

- (1) A receiver must give the chief executive a report about the receivership when the chief executive directs, containing any information reasonably required by the chief executive.
- (2) The receiver must also give the chief executive a report when the receiver’s appointment ends.
- (3) The report given under subsection (2) must contain—
  - (a) if a copy of the final claims report prepared under section 61(7) has not already been provided under section 62(3)(b)—a copy of the final claims report; and
  - (b) any other information reasonably required by the chief executive.

- (4) The receiver is not entitled to be paid for the receivership until reports required under this section are given to the chief executive.

## **Subdivision 6      Miscellaneous**

### **68      Receiver not personal representative**

To remove any doubt, it is declared that a receiver of a deceased agent, in performing the receiver's functions, is not to be taken to be the agent's personal representative.

### **69      Receivership property free from execution or attachment**

Receivership property can not be levied on or taken or attached under a judgment.

## **Division 4              Special investigators**

### **70      Appointment of special investigator**

- (1) The chief executive may, by written notice, appoint a special investigator over an agent's trust account if the chief executive considers the trust account has not been kept as required under this Act.
- (2) The notice must state—
- (a) the agent's name and details of the trust account; and
  - (b) the terms on which the special investigator is appointed; and
  - (c) the special investigator's functions and powers.
- (3) A copy of the notice must be given to the agent.
- (4) The chief executive may appoint a person as a special investigator only if the chief executive is satisfied the person

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is appropriately qualified to perform a special investigator's functions.

- (5) An inspector may be appointed as a special investigator.

## **71 Special investigators—functions**

A special investigator appointed under this division may perform any of the following functions stated in the investigator's notice of appointment—

- (a) inspecting the agent's trust accounts and records that relate to the trust accounts;
- (b) preparing or constructing incomplete trust account records;
- (c) performing other accounting tasks to establish the state of the trust account;
- (d) reporting to the chief executive under section 74.

## **72 Special investigators—powers**

- (1) The chief executive may, by signed notice, give a special investigator a power that may be given to an inspector under the FTI Act.
- (2) A special investigator's powers under subsection (1) end when the special investigator's appointment ends.

## **73 Agent must comply with special investigator's lawful requests**

- (1) The agent over whose trust account the special investigator is appointed must comply with a special investigator's lawful requests, unless the agent has a reasonable excuse.  

Maximum penalty—200 penalty units or 1 year's imprisonment.
- (2) The special investigator must advise the chief executive of a failure by the agent to comply with a request.

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**74 Reports to chief executive**

- (1) A special investigator must report to the chief executive at the time, and in the way, required by the chief executive.
- (2) However, if the special investigator considers sufficient grounds exist to appoint a receiver, the special investigator must advise the chief executive immediately of the grounds.

**75 Recovery of remuneration and costs**

- (1) The following persons are liable to reimburse the chief executive for an amount paid to the special investigator, including an amount paid from the fund, for the investigator's remuneration and costs—
  - (a) the agent over whose trust account the special investigator is appointed;
  - (b) if the agent over whose trust account the special investigator is appointed is a corporation, the executive officers of the corporation when the event for which the chief executive appointed the special investigator happened.
- (2) If more than 1 person is liable to reimburse the chief executive, the liability of the persons is joint and several.
- (3) The chief executive may recover an amount liable to be reimbursed under subsection (1) as a debt.
- (4) Before taking action to recover the amount of the debt, the chief executive must give a letter of demand to each person liable to reimburse the chief executive, requiring the person to pay the amount to the chief executive within 1 month after receiving the letter.

**76 Ending special investigator's appointment**

A special investigator's appointment ends if—

- (a) the investigator resigns by signed notice given to the chief executive; or

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- (b) the investigator dies; or
- (c) the investigator's notice of appointment states the appointment ends when an event happens and the event happens; or
- (d) the chief executive ends the appointment by signed notice given to the investigator.

## **Part 5 Jurisdiction of QCAT**

### **77 Jurisdiction**

For this Act, QCAT has the following jurisdiction—

- (a) to hear and decide—
  - (i) claims against the fund referred by the chief executive under section 95(1)(b); and
  - (ii) applications for reimbursement orders under part 8, division 4;
- (b) to review a decision of the chief executive—
  - (i) under section 45(1); or
  - (ii) for which an information notice is given under section 10(5)(b), 90 or 102;
- (c) to decide whether to extend the time within which to make a claim or seek review of a decision of the chief executive under section 122.



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## Part 6 Claim fund

### 78 Claim fund

- (1) The claim fund is established.
- (2) The Treasurer must transfer amounts to the fund, appropriated from time to time, to meet claims against the fund, the special payments made from the fund or the remuneration and costs of a receiver or special investigator payable from the fund, for any particular financial year.
- (3) Accounts for the fund must be kept as part of the departmental accounts of the department.
- (4) Amounts transferred to the fund must be deposited in a departmental financial-institution account of the department, but may be deposited in an account used for depositing other amounts of the department.

### 79 How fund may be applied

- (1) The fund must be used to pay the amount of all claims allowed against the fund.
- (2) The fund may also be used to pay—
  - (a) the remuneration and costs of the following—
    - (i) a receiver appointed under section 47;
    - (ii) a special investigator appointed under section 70;or

*Note—*

The remuneration and costs of a receiver are recoverable under section 64 (Recovery of remuneration and costs). The remuneration and costs of a special investigator are recoverable under section 75 (Recovery of remuneration and costs). Amounts recovered under these sections by the chief executive are paid to the fund under section 120 (Recovery of payments—general).

- (b) a special payment by the chief executive under part 8, division 2.

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- (3) The Treasurer may transfer an amount from the fund to the consolidated fund.

## Part 7 Claims against the fund

### Division 1 Preliminary

#### 80 Definitions for pt 7

In this part—

*agent* includes—

- (a) a former agent; and
- (b) a person who is not authorised under the *Debt Collectors (Field Agents and Collection Agents) Act 2014*, part 2, division 1 to perform a relevant activity within the meaning of that division, but who acts as if the person were authorised under that division; and
- (c) a person who is not licensed under an Agents Act, but who acts as a licensee; and
- (d) a former licensee under the repealed *Property Agents and Motor Dealers Act 2000*.

*chattel auctioneer* see the *Motor Dealers and Chattel Auctioneers Act 2014*, schedule 4.

*claimant* means a person who makes a claim against the fund.

*claim notice* see section 91(1).

*financial loss*, suffered by a person, if evidenced by a judgment of a court, does not include interest awarded on the judgment.

*marketeting contravention* means a contravention of any of the following by a relevant person—

- 
- (a) the *Property Occupations Act 2014*, section 207, 208 or 209;
  - (b) section 573A, 573B or 573C of the repealed Act.

*Note—*

For claims relating to offences mentioned in paragraph (b), see section 155 (Claim fund).

***motor dealer*** see the *Motor Dealers and Chattel Auctioneers Act 2014*, schedule 4.

***motor vehicle*** see the *Motor Dealers and Chattel Auctioneers Act 2014*, schedule 4.

***registered office—***

- (a) of an agent who is a debt collector under the *Debt Collectors (Field Agents and Collection Agents) Act 2014*—see section 13 of that Act; or
- (b) of an agent who is a licensee under the *Motor Dealers and Chattel Auctioneers Act 2014*—see section 70 of that Act; or
- (c) of an agent who is a licensee under the *Property Occupations Act 2014*—see section 93 of that Act.

***relevant activity***, for a debt collector under the *Debt Collectors (Field Agents and Collection Agents) Act 2014*, means any of the following activities under that Act—

- (a) a debt collection activity;
- (b) a repossession activity;
- (c) a process serving activity.

***relevant person*** means the following—

- (a) an agent;
- (b) an agent's employee or agent, or a person carrying on business with the agent;
- (c) a person having charge or control, or apparent charge or control, of an agent's registered office or business.

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*residential property* see the *Property Occupations Act 2014*, schedule 3.

*respondent*, for a claim, means a person whose actions are alleged to have given rise to the claim.

**81 What is the purchase of a *non-investment residential property***

A person purchases a *non-investment residential property* only if—

- (a) the property is a residential property; and
- (b) either of the following has been assessed for the purchase—
  - (i) a concession, under the *Duties Act 2001*, chapter 2, part 9, for transfer duty;
  - (ii) a concession, under the repealed *Stamp Act 1894*, section 55A, for stamp duty.

**Division 2 Persons who may claim**

**82 Claims**

- (1) A person may claim against the fund if the person suffers financial loss because of the happening of any of the following events—
  - (a) a contravention of section 21 or 22;
  - (b) a stealing, misappropriation or misapplication by a relevant person of property entrusted to the person as agent for someone else in the person's capacity as a relevant person;
  - (c) the contravention by a relevant person of the *Debt Collectors (Field Agents and Collection Agents) Act 2014*, section 133;

- (d) the contravention by a relevant person of the following provisions of the *Motor Dealers and Chattel Auctioneers Act 2014*—
- section 91
  - section 92
  - section 104(4)
  - section 113
  - section 136
  - section 137
  - section 215
  - section 216;
- (e) a failure of a motor dealer to ensure a person who has bought a motor vehicle sold by or for the dealer gains clear title to the vehicle at the time property in the vehicle passes to the buyer, whether or not the motor dealer contravenes the *Motor Dealers and Chattel Auctioneers Act 2014*, section 96;
- (f) a failure of a chattel auctioneer to ensure a person who has bought a motor vehicle sold by the auctioneer (other than a motor vehicle sold for another auctioneer or a motor dealer) gains clear title to the vehicle at the time property in the vehicle passes to the buyer, whether or not the auctioneer contravenes the *Motor Dealers and Chattel Auctioneers Act 2014*, section 142;
- (g) a contravention by a relevant person of the following provisions of the *Property Occupations Act 2014*—
- section 154
  - section 155
  - section 206
  - section 207
  - section 208
  - section 209

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- section 212;
- (h) a contravention of any of the following provisions of the *Land Sales Act 1984* by a licensee under the *Property Occupations Act 2014* appointed by the owner of land to which the *Land Sales Act 1984* applies or a relevant person employed by the licensee—
- section 9
  - section 11
  - section 12
  - section 21
  - section 23
  - section 24.
- (2) A person may make a claim against the fund for financial loss relating to a non-investment residential property purchased by the person because of, or arising out of, a marketeering contravention only to the extent the loss is capital loss.
- (3) Also, capital loss mentioned in subsection (2) may be claimed only if the loss has been realised as mentioned in section 110.

### **83 Claim may be made whether or not claim made against receiver**

A person may make a claim against the fund under section 82 even if the person has made another claim for the loss against a receiver and the receiver has not considered or has refused the other claim.

### **84 Persons who can not claim generally**

- (1) A person who suffers financial loss because of, or arising out of, the stealing, misappropriation or misapplication of an amount that a relevant person was directed to invest under section 17 can not make a claim against the fund.
- (2) Also, the following persons can not make a claim against the fund for the following financial losses—

- 
- (a) a seller of livestock who suffers financial loss in relation to the sale of the livestock if—
- (i) the livestock are received by a relevant person from the seller; and
  - (ii) the relevant person and the seller agree in writing that the relevant person guarantees payment to the seller of the livestock's purchase price;

*Note—*

The practice described in subparagraph (ii) is commonly referred to as 'del credere'.

- (b) a relevant person who suffers financial loss in the course of performing an activity, or carrying on a business, as a relevant person;
- (c) a person holding a licence, however described, under a corresponding law that is similar to a licence under this Act who suffers financial loss in the course of performing an activity, or carrying on business, under the person's licence;
- (d) a financier who incurs financial loss acting in the capacity of a financier;
- (e) a person who suffers financial loss because the person guaranteed a motor dealer's obligations under a financial arrangement made by the motor dealer;
- (f) a person who suffers financial loss because of a failure to disclose or make effective disclosure under the *Property Occupations Act 2014*, section 158;
- (g) a person who suffers financial loss because of, or arising out of, a marketeering contravention relating to the purchase by the person of a residential property, other than a non-investment residential property.

- (3) In this section—

*financier* means a person whose ordinary and primary business, whether or not it carries on any other business, is providing credit.

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*livestock* see the *Motor Dealers and Chattel Auctioneers Act 2014*, schedule 4.

## **85 General time limit for making claims**

- (1) This section applies to a claim against the fund other than a claim because of, or arising out of, a marketeering contravention relating to the purchase of a non-investment residential property.
- (2) A person may make the claim against the fund for financial loss for the happening of an event only if the person makes the claim within the earlier of the following—
  - (a) 1 year after the person becomes aware that the person has suffered the loss;
  - (b) 3 years after the happening of the event.
- (3) However, if the person starts a proceeding in a court to recover the person's financial loss within the time permitted to make a claim under subsection (2), the person may make the claim within 3 months after the proceeding in the court ends.
- (4) Subsection (3) does not limit the time allowed under subsection (2) to make a claim.
- (5) In this section—  
*court* includes QCAT.

## **86 Time limit for making particular claims relating to marketeering contraventions and non-investment residential property**

- (1) A person may make a claim against the fund for capital loss because of, or arising out of, a marketeering contravention relating to the person's purchase of a non-investment residential property only if—
  - (a) the person has within 1 year after the contract date, given the chief executive notice in the approved form that the person intends to make the claim; and



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- (b) the person makes the claim within 6 years after the contract date.
- (2) The approved form must include the matters mentioned in section 88(2)(a) to (e).
- (3) The QCAT Act, section 61 does not apply to enable QCAT to extend the time permitted to do a thing mentioned in subsection (1)(a) or (b).
- (4) In this section—  
*contract date* means the day on which the contract for the purchase was entered into.

### **87 Time limit for a claim notified by receiver**

Despite section 85 or 86, a claim given under section 62(3)(b) to the chief executive by a receiver is taken to have been made within the time allowed under section 85 or 86.

## **Division 3 Making and dealing with claims**

### **88 Making claims other than particular claims relating to marketeering contraventions and non-investment residential property**

- (1) This section applies to a claim against the fund, other than a claim for loss because of, or arising out of, a marketeering contravention relating to the purchase of a non-investment residential property.
- (2) The claim must be made to the chief executive in the approved form and state—
- (a) the event alleged to give rise to the claim; and
  - (b) when the event happened; and
  - (c) if the claimant was not immediately aware that the claimant suffered financial loss because of the happening of the event, when the claimant became aware of the financial loss; and

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- (d) all relevant particulars about the event and the financial loss; and
  - (e) the claimant's estimated financial loss.
- (3) The claim is taken to have been made on the day the claim is given to the chief executive even if the claimant is unable to state all of the particulars mentioned in subsection (2).
- (4) The chief executive may require the claimant to verify the claim, or part of the claim.
- Example of verification—*  
statutory declaration
- (5) If the claim is not made within the time allowed under section 85, the chief executive must give the person a notice in the approved form stating that—
- (a) the claim is out of time; and
  - (b) the person may apply to QCAT, within 14 days after being given the notice, for an extension of time within which to make the claim.

## **89 Making particular claims relating to marketeering contraventions and non-investment residential property**

- (1) This section applies to a claim against the fund for capital loss because of, or arising out of, a marketeering contravention relating to the purchase of a non-investment residential property.
- (2) The claim must—
- (a) be made to the chief executive in the approved form; and
  - (b) state the realised capital loss claimed.

*Note—*

See also division 6 (Deciding financial loss for non-investment residential property).

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- (3) A purported claim that does not substantially comply with subsection (2) is of no effect.
  - (4) The chief executive may require the claimant to verify the claim or part of the claim.  
*Example of verification—*  
statutory declaration
  - (5) To remove any doubt, it is declared that if the purchase was by more than 1 person, only 1 claim may be made.
  - (6) A claim mentioned in subsection (5) may be made by 1 of the purchasers or by 2 or more of the purchasers jointly.

## **90 Invalid claims**

- (1) This section applies in relation to a claim by a person against the fund if the chief executive considers the person has no grounds for making the claim under this part.
- (2) The chief executive—
  - (a) may decide not to deal with the claim; and
  - (b) must give the person an information notice complying with the QCAT Act, section 157(2) for the decision.

## **91 Chief executive to give respondent notice of claim**

- (1) The chief executive must give notice of a claim (a *claim notice*) to the respondent.
- (2) However, a claim notice need not be given to the respondent if the chief executive is reasonably satisfied any of the following have been appointed for the respondent—
  - (a) for a corporation—a liquidator, controller, administrator or receiver under the Corporations Act;
  - (b) a trustee in bankruptcy.
- (3) The claim notice must be accompanied by a copy of the claim.
- (4) The respondent may—

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- (a) give the chief executive any information relevant to the claim; or
  - (b) attempt to settle the claim with the claimant.
- (5) The respondent must give the chief executive any information relevant to the claim within 14 days after the claim notice is given to the respondent.
- (6) If the respondent and claimant settle the claim, the respondent must immediately advise the chief executive in writing and provide evidence of the settlement.
- (7) If the chief executive is satisfied the claim has settled, the chief executive may treat the claim as having been withdrawn.
- (8) In this section—
- claim* does not include a claim given to the chief executive by a receiver under section 62(3)(b).

## **92 Corporation to give notices relating to claim**

- (1) This section applies if the respondent is a corporation that is given a claim notice under section 91.
- (2) The respondent must give written notice of the claim, within 14 days after the claim notice is received by the respondent, to each person who was an executive officer of the corporation at the time the event alleged to give rise to the claim happened, unless the respondent has a reasonable excuse.
- Maximum penalty—
- (a) for an individual guilty of an offence under chapter 2 of the Criminal Code—100 penalty units; or
  - (b) for a corporation—500 penalty units.
- (3) An executive officer mentioned in subsection (2) is taken to be a respondent to the claim.
- (4) The respondent is taken to have given the notice to an executive officer if the notice is sent to the residential and business address of the officer last known to the respondent.

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- (5) The respondent must give the chief executive, within 21 days after the claim notice is given to the respondent—
- (a) written notice of the name and last known residential and business address of each person who was an executive officer of the corporation at the time the event alleged to give rise to the claim happened; and
  - (b) a copy of the notice to the executive officer given under subsection (2) and information about when the notice was given.

Maximum penalty for subsection (5)—

- (a) for an individual guilty of an offence under chapter 2 of the Criminal Code—100 penalty units; or
- (b) for a corporation—500 penalty units.

### **93 Dealing with claims that have not settled**

- (1) If the claim has not settled within 28 days after the claim notice is given to the respondent (the *settlement period*), the claimant may, within 30 days after the settlement period ends, give the chief executive written notice that the claimant wants to proceed with the claim.
- (2) If the claimant does not give written notice to the chief executive within the timeframe required under subsection (1), the chief executive may treat the claim as having been withdrawn.

### **94 Inspector may investigate claims and report and related documents may be referred to QCAT**

- (1) The chief executive may direct an inspector to investigate a claim that has not settled.
- (2) If an inspector investigates a claim, the inspector must prepare a report about the claim and give a copy of the report to the chief executive.
- (3) The chief executive must give a copy of the report to the claimant and the respondent and, if the report is about a claim

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to be decided by QCAT, to the principal registrar under the QCAT Act.

- (4) The chief executive may also give documents relating to the claim to the claimant and the respondent (the *parties*) and, if the claim is to be decided by QCAT, to the principal registrar under the QCAT Act of QCAT whether or not a report is given to the parties and QCAT under subsection (3).

## **Division 4            Deciding claims**

### **Subdivision 1        Who decides claim**

#### **95        Chief executive may decide or refer claim**

- (1) The chief executive may—
  - (a) decide a claim under this division; or
  - (b) refer the claim to QCAT to decide, if the chief executive considers—
    - (i) the claim could be more effectively or conveniently decided by QCAT because of, for example, the nature and complexity of the claim; or
    - (ii) it would be appropriate for the claim to be decided by QCAT.
- (2) However, if, under section 122, QCAT decides to extend the time within which a claim must be filed, QCAT may also decide the claim.

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## **Subdivision 2 Procedure for chief executive to decide claims**

### **96 Chief executive must invite comments about inspector's report**

- (1) This subdivision applies to a claim to be decided by the chief executive.
- (2) The chief executive, by written notice, must invite the claimant and the respondent (the *parties*) to give the chief executive written comments about the inspector's report prepared under section 94 within 14 days after giving the notice.
- (3) If the chief executive receives comments from a party, the chief executive must provide each other party with a copy of the comments and invite the parties to give the chief executive any further comments within 14 days after giving the notice.

### **97 Amendment of claim**

- (1) The chief executive may, at any time before deciding the claim, amend the particulars of the claim in the way the chief executive considers appropriate—
  - (a) on application, if the chief executive is satisfied the amendment is of a formal or minor nature and no party is unfairly prejudiced by the amendment; or
  - (b) on the chief executive's own initiative, if all the parties agree.
- (2) The amended claim is taken to be the claim.

### **98 Requiring information**

- (1) The chief executive may, by written notice, ask a person to—
  - (a) give to the chief executive information in the person's knowledge about a stated matter within a stated reasonable time and in a stated reasonable way;

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- (b) give to the chief executive within a stated reasonable time and in a stated reasonable way, a document or copy of a document about a stated matter in the person's possession or control.
- (2) The chief executive may give a notice under subsection (1) only if the information or document the subject of the notice is reasonably required to decide the claim.
- (3) A person must comply with a requirement under subsection (1) unless the person has a reasonable excuse.  
Maximum penalty—100 penalty units.
- (4) It is a reasonable excuse for a person not to give information to the chief executive if doing so might tend to incriminate the person.

## **99 Respondent fails to respond to claim**

- (1) This section applies if the chief executive is satisfied the respondent—
  - (a) has been given notice of the claim, but has not responded to the claim; or
  - (b) can not be located after making reasonable inquiries into the respondent's whereabouts; or
  - (c) has not been given notice of the claim because the chief executive is not required to give the notice under section 91(2).
- (2) The chief executive may consider and decide the claim in the absence of any comments or submissions made by the respondent.

## **100 Deciding claims**

- (1) The chief executive may decide to allow the claim, wholly or partly, or reject the claim.



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- (2) However, the chief executive may decide to allow the claim only if satisfied, on the balance of probabilities, that the person may make the claim under division 2.
  - (3) The chief executive must have regard to the following when deciding the claim—
    - (a) the parties' comments given under section 96(2);
    - (b) any information or document given under section 98;
    - (c) any report prepared by an inspector under section 93.
  - (4) The chief executive must decide the claim without a hearing.
  - (5) If the chief executive decides to allow the claim, wholly or partly, the chief executive must—
    - (a) take into account—
      - (i) any amount the claimant might reasonably have received or recovered if not for the claimant's neglect or default; and
      - (ii) any amount ordered to be paid to the claimant as compensation under the *Property Occupations Act 2014*, section 188, 204 or 228; and
    - (b) decide the amount of the claimant's financial loss; and
    - (c) name the respondent who is liable for the claimant's financial loss.

**101 Chief executive's decision binds the parties and no extension of time is allowed**

- (1) If no application for review of the chief executive's decision is made within the time allowed under the QCAT Act, section 33(3)—
  - (a) the chief executive's decision is binding on the claimant and the respondent; and
  - (b) the amount paid to the claimant from the fund in accordance with the decision may be recovered by the chief executive as a debt owing to the chief executive by the respondent named in the decision; and

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- (c) the respondent may not subsequently challenge the correctness of the decision or the amount payable.
- (2) Section 122 and the QCAT Act, section 61 do not apply to enable QCAT to extend the time within which a person may seek a review under the QCAT Act, section 33(3).

## **102 Notifying decision**

- (1) The chief executive must give the parties an information notice complying with the QCAT Act, section 157(2) for the chief executive's decision under section 100(1).
- (2) However, the information notice need not include written reasons for the decision.
- (3) The information notice must include the following additional information—
  - (a) if reasons for the decision are not included in the notice—that the parties may ask the chief executive to give written reasons for the decision under the QCAT Act, section 158; and
  - (b) if the decision is that an amount be paid to the claimant from the fund—
    - (i) that the respondent named in the decision is liable to reimburse the fund to the extent of the amount paid to the claimant from the fund; and
    - (ii) if more than 1 person is named as being liable to reimburse the fund, that the liability of the persons named is joint and several; and
  - (c) that if no application is made to have the decision reviewed within the time allowed under the QCAT Act, section 33(3)—
    - (i) the decision is binding on the parties; and
    - (ii) if the decision is to allow the claim and authorise payment from the fund, the respondent named in the decision as liable to reimburse the fund is liable

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to reimburse the fund to the extent of the amount paid to the claimant from the fund.

### **103 Party may ask QCAT to review chief executive's decision**

- (1) A party who is dissatisfied with the chief executive's decision under section 100 may apply, as provided under the QCAT Act, to QCAT for a review of the decision.
- (2) Any of the following who is not the party seeking the review is a party to the review—
  - (a) the claimant;
  - (b) the chief executive;
  - (c) the respondent.

### **104 Public access to information about decisions**

The chief executive may publish a decision made under this division, with or without the reasons for the decision, in any way the chief executive considers appropriate.

## **Division 5 QCAT proceedings**

### **105 Deciding claims**

- (1) QCAT may decide to allow a claim wholly or partly, or reject a claim.
- (2) However, QCAT may decide to allow the claim only if satisfied, on the balance of probabilities, that the person may make the claim under division 2.
- (3) If QCAT decides to allow the claim, wholly or partly, QCAT must—
  - (a) take into account—
    - (i) any amount the claimant might reasonably have received or recovered if not for the claimant's neglect or default; and

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- (ii) any amount ordered to be paid to the claimant as compensation under the *Property Occupations Act 2014*, section 188, 204 or 228; and
- (b) decide the amount of the claimant's financial loss; and
- (c) name the person who is liable for the claimant's financial loss.

### **106 Orders QCAT may make on claim hearing**

- (1) QCAT may make the following orders for a claim against the fund—
  - (a) an order allowing the claim, wholly or partly, or rejecting the claim;
  - (b) an order stating that a named person is liable for a claimant's financial loss and the amount of the loss;
  - (c) an order about recovery of an amount payable for a claim.
- (2) QCAT may make an order that no amount is to be reimbursed to the fund for a claim by the respondent if QCAT is satisfied any of the following have been appointed for the respondent—
  - (a) for a corporation—a liquidator, controller, administrator or receiver under the Corporations Act;
  - (b) a trustee in bankruptcy.

### **107 QCAT to give chief executive final decision or notify chief executive of appeal**

- (1) This section applies in relation to a proceeding in QCAT involving a claim against the fund, if the chief executive is not a party to the proceeding.
- (2) QCAT must give the chief executive—
  - (a) its final decision under the QCAT Act, section 121(1)(b); and

- (b) if the tribunal gives written reasons for the decision—a copy of the reasons.
- (3) If a party to the proceedings appeals the final decision or applies for leave to appeal the final decision, QCAT must give the chief executive—
  - (a) written notice of the appeal; and
  - (b) for an application for leave to appeal—a copy of the application.

### **108 Application of QCAT Act, s 131**

To remove any doubt, it is declared that the reference in the QCAT Act, section 131(2) to a person includes a reference to the chief executive.

## **Division 6 Deciding financial loss for non-investment residential property**

### **109 Application of div 6**

This division applies if the chief executive or QCAT is deciding a claimant's financial loss for realised capital loss because of, or arising out of, a marketeering contravention relating to the purchase of a non-investment residential property.

### **110 General test for working out loss**

- (1) Subject to section 111, the financial loss is the amount of the difference between the contract price or value for the property paid by the claimant and the contract price or value for the sale of the property by the claimant (the *on-sale*).
- (2) The loss is only realised if the on-sale has been completed.

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### **111 Adjustment for on-sale not at market value**

- (1) The chief executive or QCAT must decide whether the contract price or value for the on-sale reasonably reflected the property's market value when the contract was entered into.
- (2) If the chief executive or QCAT decides the contract price or value did not reasonably reflect the property's market value—
  - (a) the chief executive or QCAT must fix what the reasonable market value of the property was when the contract was entered into; and
  - (b) for section 110(1), the contract price or value is taken to be that fixed market value.

## **Part 8 Payments from the fund**

### **Division 1 Payment and recovery of claims**

#### **112 Payment of claims**

- (1) If a claim is allowed under section 100 or 105 or on a review of the chief executive's decision, the chief executive must authorise payment from the fund in the amount decided by the chief executive or QCAT.
- (2) A payment under subsection (1)—
  - (a) must not be made—
    - (i) for a claim decided by the chief executive—until the end of the period allowed for review of the chief executive's decision and, if a review is applied for, until the review and any appeal is finally decided; or
    - (ii) otherwise—until the end of the period allowed for appeal and, if an appeal is made, until the appeal is finally decided; and

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- (b) is taken to be in full settlement of the claim against the fund.
- (3) Subsection (4) applies if the chief executive is satisfied all or part of the amount of the claim relates to an amount the agent has failed to pay to a relevant government agency on behalf of a client.
- (4) The chief executive may make all or part of the payment directly to the relevant government agency instead of to the claimant.
- (5) This section is subject to section 113.
- (6) In this section—

*relevant government agency* means a government entity under the *Public Service Act 2008*, section 24.

### **113 Limits on recovery from fund**

- (1) A claimant can not recover from the fund an amount more than the balance of the claimant's financial loss after deducting from the claimant's loss—
- (a) the amount, including the value of all benefits, received or recovered by the claimant from a source other than the fund, or from a special payment by the chief executive, in reduction of the loss; and
- (b) the amount, including the value of all benefits, the chief executive or QCAT considers the claimant might reasonably have received or recovered if not for the claimant's neglect or default.
- Examples of paragraph (a)—*
- compensation received from the agent for the loss
  - a payment from a receiver for the loss
- (2) A claimant may not recover from the fund for a single claim an amount more than the amount prescribed under a regulation.
- (3) Also, the claimant may not recover more than \$35000 from the fund for a single claim for financial loss if the claim

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relates to a non-investment residential property purchased by the claimant because of, or arising out of, a marketeering contravention.

- (4) A regulation may prescribe the total amount that may be paid from the fund because of, or arising out of, a contravention, failure to ensure clear title to a vehicle, stealing, misappropriation or misapplication by a single person.
- (5) Interest is not payable from the fund for a claim allowed against the fund.

#### **114 Notice of other recovery**

A claimant must give the chief executive written notice of an amount or benefit, other than an amount from the fund, received by the claimant for the claimant's financial loss, whether before or after the claim is paid.

Maximum penalty—200 penalty units or 3 years imprisonment.

## **Division 2 Special payments**

#### **115 Chief executive may make special payment**

- (1) The chief executive may make a payment from the fund to an account (a *special payment*) if—
  - (a) a direction has been given under section 42 for the account because the chief executive believes conduct mentioned in section 42(1) has occurred; and
  - (b) the chief executive is satisfied—
    - (i) there are, or is likely to be, a significant number of claims against the fund as a result of the alleged conduct; and
    - (iii) an immediate special payment to the account is necessary to substantially mitigate loss to the fund.



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- (2) The amount of the special payment must not exceed the amount the chief executive believes has been stolen, misappropriated or misapplied under section 42.

## Division 3                      Liability for payments

### 116      Liability for payment from the fund

- (1) This section applies if—
- (a) a person is named in the chief executive's decision or QCAT's order as being liable for a claimant's financial loss; and
- Note—*
- See sections 100 (Deciding claims), 105 (Deciding claims) and 106 (Orders QCAT may make on claim hearing).
- (b) an amount has, under section 112, been paid from the fund in settlement of the claimant's claim.
- (2) This section also applies if a person is the holder of an account under part 4 in relation to which the chief executive makes a special payment under section 115.
- (3) A person mentioned in subsection (1)(a) or (2) is the **responsible person** for the amount.
- (4) Each of the following persons is jointly and severally liable to reimburse the fund to the extent of the amount paid from the fund for the claim or special payment—
- (a) the responsible person;
  - (b) if the responsible person is a corporation, each person who was an executive officer of the corporation when the relevant event mentioned in section 82 happened.
- (5) The chief executive may recover as a debt from each person mentioned in subsection (4) an amount for which the person is, under the subsection, liable to reimburse the fund.
- (6) Before taking action to recover the amount of the debt, the chief executive must give a letter of demand to the debtor

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requiring the debtor to pay the amount to the chief executive within 28 days after receiving the letter.

## **Division 4                      Applications for reimbursement orders**

### **117      Application for reimbursement order**

- (1) This section applies if—
  - (a) for a claim against the fund—
    - (i) the chief executive decides to allow, wholly or partly, the claim under section 100; and
    - (ii) the responsible person liable to reimburse the fund under section 116 has not done so as required under a letter of demand given to the person under section 116(6); or
  - (b) the chief executive has made a special payment under section 115, and the person who is the holder of the account under part 4 in relation to which the chief executive made the special payment has not reimbursed the fund as required under a letter of demand given to the respondent under section 116(6); or
  - (c) a person is liable to reimburse the chief executive for a receiver's remuneration and costs, and has not done so as required under a letter of demand given to the person under section 64(4); or
  - (d) a person is liable to reimburse the chief executive for an investigator's remuneration and costs, and has not done so as required under a letter of demand given to the person under section 75(4).
- (2) In this division, a **respondent** is a person mentioned in subsection (1)(a)(ii), (b), (c) or (d).
- (3) The chief executive may apply, as provided under the QCAT Act, to QCAT for an order that the respondent reimburse the fund or the chief executive.

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- (4) The application must be accompanied by the following documents—
- (a) if the application relates to the reimbursement of a claim against the fund—a copy of the information notice given under section 102;
  - (b) a copy of the letter of demand given under section 64(4), 75(4) or 116(6);
  - (c) a statutory declaration by the chief executive stating—
    - (i) the amount paid from the fund for the special payment or in settlement of the claim, or the amount paid to a receiver or investigator for remuneration and costs; and
    - (ii) the amount of any payment received from the respondent in satisfaction of the claim, special payment or amount paid to the receiver or investigator.

## **118 Respondent to be advised of application**

- (1) The chief executive must—
- (a) give a copy of the application and the accompanying documents to the respondent; and
  - (b) advise the respondent that QCAT will make a reimbursement order if satisfied that—
    - (i) a letter of demand was sent to the respondent under section 64(4), 75(4) or 116(6); and
    - (ii) the respondent has not paid the stated amount within the time allowed under the letter of demand; and
    - (iii) if the application relates to the reimbursement of a claim against the fund or special payment—the matters stated in subsection (2) apply; and
  - (c) advise the respondent that the respondent may make written submissions for QCAT's consideration about when and in what way the respondent intends to satisfy

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the amount paid in settlement of the claim or as a special payment or to a receiver or investigator.

- (2) For subsection (1)(b)(iii), the matters are—
- (a) under the chief executive's decision the respondent is liable to reimburse the fund in a stated amount; and
  - (b) an information notice under section 102 was given to the respondent; and
  - (c) either—
    - (i) the respondent did not apply to QCAT under section 103 to have the decision reviewed; or
    - (ii) the decision has been reviewed by QCAT, and under QCAT's decision, the respondent is liable to reimburse an amount to the chief executive or the fund.

## **119 Reimbursement orders**

- (1) QCAT must consider an application for a reimbursement order and any written submissions made by the respondent for the application.
- (2) QCAT must make a reimbursement order if satisfied that—
  - (a) the respondent has not paid the stated amount within the time allowed under the letter of demand; and
  - (b) if the application relates to the reimbursement of a claim against the fund—the matters stated in subsection (3) apply.
- (3) For subsection (2)(b), the matters are—
  - (a) the chief executive has made a decision about a claim against the fund; and
  - (b) under section 116 the respondent is liable to reimburse the fund in a stated amount; and
  - (c) either—

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- (i) the respondent did not apply to QCAT under section 103 to have the decision reviewed; or
  - (ii) the decision has been reviewed by QCAT, and under QCAT's decision, the respondent is liable to reimburse an amount to the chief executive or the fund; and
  - (d) written notice of the chief executive's decision, a copy of the decision and an information notice under section 102 was given to the respondent.
- (4) If QCAT makes a reimbursement order, the order must state that the respondent is liable to pay to the chief executive a stated amount within a stated period.

## **Division 5                      Other reimbursements to fund**

### **120      Recovery of payments—general**

The chief executive must pay to the consolidated fund an amount recovered by the chief executive in satisfaction of an amount paid from the claim fund.

### **121      Recovery of overpayments**

- (1) This section applies if a claimant who has received a payment from the fund—
- (a) recovers—
    - (i) an amount more than the claimant is entitled to recover under section 112 (the *overpayment*); or
    - (ii) a thing capable of physical delivery for which the claimant received a payment from the fund; or
  - (b) is entitled to less than the amount of the payment under the following—
    - (i) QCAT's decision on review of the chief executive's decision about the claimant's claim;

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- (ii) a decision on appeal against a decision by QCAT about the claimant's claim.
- (2) The difference in the amount the claimant is entitled to and the amount of the payment mentioned in subsection (1)(b) is also an *overpayment*.
- (3) The claimant must—
  - (a) reimburse the overpayment to the fund; or
  - (b) for a thing capable of physical delivery—
    - (i) deliver the thing to the chief executive in accordance with the chief executive's direction; or
    - (ii) reimburse to the fund the amount of the payment from the fund the person received for the thing.

Maximum penalty—200 penalty units.

- (4) The chief executive may recover the overpayment or the amount of the payment from the fund the person received for the thing as a debt owing to the chief executive by the person.
- (5) If the chief executive receives a thing, the chief executive may deal with the thing in the way the chief executive decides.

## **Part 9                      Other matters for proceedings relating to fund**

### **122      QCAT may extend time**

- (1) QCAT may extend the time within which to make a claim or seek review of a decision of the chief executive if QCAT is satisfied—
  - (a) the application is made—
    - (i) for a claim—within the time mentioned in the notice given under section 88(5)(b); or

- (ii) for a review of a decision of the chief executive—within 42 days after the person is given notice of the decision to be reviewed; and
- (b) it is appropriate to extend time having regard to—
  - (i) the reasons for not making the claim or seeking the review within the time allowed; and
  - (ii) the application generally; and
  - (iii) for a claim, the relative hardship that an extension of time or a refusal to extend time would place on the claimant or respondent; and
  - (iv) the justice of the matter generally.
- (2) No appeal lies against QCAT’s decision under this section.
- (3) To remove any doubt, it is declared that the QCAT Act, section 61 does not apply for a proceeding to which this section applies.

### **123 Chief executive may make submissions**

- (1) This section applies if a proceeding in a court or tribunal involves a claim against the fund.
- (2) The chief executive may make submissions to the court or tribunal, including submissions about liability for the claimant’s financial loss.
- (3) Subsection (2) applies whether or not the chief executive is a party to the proceeding.

### **124 Publication**

A decision or order involving the claim fund must be published under the QCAT Act, section 125.

## **Part 10                      Injunctions and undertakings**

### **Division 1                      Injunctions**

#### **125      Grounds for injunction**

The District Court may grant an injunction against a person (a *respondent*) if the court is satisfied the respondent has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) a contravention of this Act; or
- (b) attempting to contravene this Act; or
- (c) aiding, abetting, counselling or procuring a person to contravene this Act; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
- (f) conspiring with others to contravene this Act.

#### **126      Who may apply for injunction**

The following persons may apply to the District Court for an injunction—

- (a) the chief executive;
- (b) a person aggrieved by the respondent's conduct.

#### **127      Injunctions**

An injunction under this part may be granted by the District Court against the respondent at any time.



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## **128 Court's powers for injunctions**

- (1) The power of the District Court to grant an injunction restraining a respondent from engaging in conduct may be exercised—
  - (a) whether or not it appears to the court the respondent intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the respondent has previously engaged in conduct of that kind.
- (2) The power of the court to grant an injunction requiring a respondent to do an act or thing may be exercised—
  - (a) whether or not it appears to the court the respondent intends to fail again, or to continue to fail, to do the act or thing; and
  - (b) whether or not the respondent has previously failed to do the act or thing.
- (3) An interim injunction may be granted under this part until the application is finally decided.
- (4) The District Court may rescind or vary an injunction at any time.

## **129 Terms of injunction**

- (1) The District Court may grant an injunction in the terms the court considers appropriate.
- (2) Without limiting the court's power under subsection (1), an injunction may be granted restraining a respondent from carrying on a business as an agent—
  - (a) for a stated period; or
  - (b) except on stated terms and conditions.
- (3) Subsection (2) applies in relation to the respondent—
  - (a) if the person is carrying on business as a licensee—whether or not the person is licensed; and

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- (b) whether or not the business is carried on as part of, or incidental to, the carrying on of another business.
- (4) Also, the court may grant an injunction requiring a respondent to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the respondent's contravention of this Act.

### **130 Undertakings as to costs**

If the chief executive applies for an injunction under this part, no undertaking as to damages or costs may be required or made.

## **Division 2 Undertakings**

### **131 Chief executive may seek undertaking after contravention**

- (1) If the chief executive believes on reasonable grounds a person has contravened or been involved in a contravention of this Act, the chief executive may, by written notice given to the person—
  - (a) state the act or omission the chief executive believes is the contravention; and
  - (b) ask the person to give the chief executive a written undertaking that the person will not continue or repeat the act or omission.
- (2) The chief executive can not start an offence proceeding against the person for the contravention if—
  - (a) the person gives the undertaking; and
  - (b) the chief executive accepts the undertaking; and
  - (c) for a contravention consisting of a series of acts or omissions, the person stops the acts or omissions.
- (3) Subsection (2) does not apply if the chief executive withdraws the undertaking under section 133.

### **132 Undertaking about other matter**

Without limiting section 131, 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.

*Example of type of undertaking for this section—*

an undertaking to publish corrective advertising

### **133 Variation and withdrawal of undertakings**

- (1) If the chief executive accepts the undertaking, it may be varied or withdrawn at any time by—
  - (a) the person who gave it, but only if the chief executive agrees to the variation or withdrawal; or
  - (b) the chief executive, if the chief executive believes, on reasonable grounds—
    - (i) that, before it was accepted, the person who gave it contravened this Act in a way unknown to the chief executive; and
    - (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.
- (2) The chief executive may also withdraw the undertaking if the chief executive believes, on reasonable grounds, it is no longer necessary.
- (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.
- (4) The variation or withdrawal takes effect when written notice of the variation or withdrawal is given to the person.

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### **134 Enforcement of undertakings**

- (1) If the chief executive believes, on reasonable grounds, a person has contravened a term of an undertaking, the chief executive may apply to the District Court for an order under this section.
- (2) If the court is satisfied the person has contravened the term, the court may make 1 or more of the following orders—
  - (a) an order directing the person to comply with the term;
  - (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;
  - (c) an order directing the person to pay compensation to someone else who has suffered loss or damage because of the contravention;
  - (d) an order directing the person to give a security bond to the State for a stated period;
  - (e) another order the court considers appropriate.
- (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—
  - (a) the chief executive applies to the court for the order; and
  - (b) the court is satisfied the person contravened the undertaking during the period for which the bond was given.

### **135 Register of undertakings**

- (1) The chief executive must keep a register of each undertaking given to the chief executive by a person under this part.
- (2) The register must contain a copy of the undertaking.
- (3) A person may, on payment of any fee that may be prescribed under a regulation, inspect, or get a copy of details in, the register—



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### **137 False or misleading statements**

- (1) A person must not, for this Act, state anything to an official the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) In this section—

*official* means—

- (a) the chief executive; or
- (b) a public service employee.

### **138 False or misleading documents**

- (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.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) informs the official, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

- (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.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (4) In this section—

*official* means—

- (a) the chief executive; or

- (b) a public service employee.

## **Division 2                    Evidentiary matters**

### **139    Evidentiary provisions**

- (1) This section applies to a proceeding under this Act.
- (2) The appointment or power of an inspector must be presumed unless a party, by reasonable notice, requires proof of—
  - (a) the appointment; or
  - (b) the power to do anything under this Act.
- (3) A signature purporting to be the signature of the chief executive or an inspector is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by the chief executive, a member of QCAT, the principal registrar under the QCAT Act or an inspector stating any of the following matters is evidence of the matter—
  - (a) a stated document is—
    - (i) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or
    - (ii) a notice, or a copy of a notice, given under this Act; or
    - (iii) a record, or a copy of a record, kept under this Act; or
    - (iv) a document, or a copy of a document, kept under this Act;
  - (b) on a stated day, a stated person—
    - (i) was, or was not, the holder of a stated licence; or
    - (ii) was given a stated notice, order, requirement or direction under this Act.

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## **140 Entries in agent's documents**

An entry in a document kept by or belonging to an agent or found in the agent's premises is evidence that the entry has been made by or with the authority of the agent.

## **Division 3 Proceedings**

### **141 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 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) If QCAT, after considering the prohibited person's evidence and submissions, if any, and any further evidence or submissions of the chief executive, is not satisfied the order should continue in force, QCAT must rescind the order.
- (5) A person must not contravene an order under this section.  
Maximum penalty—540 penalty units.
- (6) An order under this section has effect on the giving of a copy of the order to the prohibited person.

### **142 Proceedings for an offence**

- (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—
  - (a) 1 year after the offence is committed;



- (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.
- (2) A proceeding for an indictable offence may be taken, at the prosecution's election—
  - (a) by way of summary proceedings under the *Justices Act 1886*; or
  - (b) on indictment.
- (3) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—
  - (a) for the summary conviction of the person; or
  - (b) for an examination of witnesses relating to the charge.
- (4) If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.
- (5) If—
  - (a) a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted on indictment; or
  - (b) the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment;the magistrate—
  - (c) must not decide the charge as a summary offence; and
  - (d) must proceed by way of a committal proceeding.
- (6) If a magistrate acts under subsection (5)—
  - (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
  - (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (5) is taken to

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be evidence in the proceeding for the committal of the person for trial or sentence; and

- (c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).
- (7) The maximum penalty that may be imposed on a summary conviction of an indictable offence is 200 penalty units or 1 year's imprisonment.
- (8) In this section—  
*indictable offence* means an offence against this Act for which the maximum penalty of imprisonment is more than 2 years.

### **143 Responsibility for acts or omissions of representatives**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (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
  - (b) the representative had the state of mind.
- (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.
- (4) In this section—  
*offence* 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.  
*representative* means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

*state of mind*, of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

#### **144 Chief executive’s right of appeal against decision of QCAT or appeal tribunal**

- (1) The chief executive may appeal against a decision of QCAT or the appeal tribunal, but only on the ground of error of law.
- (2) In this section—

*appeal tribunal* means QCAT as constituted under the QCAT Act, section 166 for an appeal.

#### **145 Power of court**

- (1) A court may, in addition to any other penalty it may impose, order that a licensee’s licence be suspended for a stated period or cancelled if the licensee has been convicted of an offence against this Act.
- (2) Subsection (3) applies if the court orders that an agent’s licence be cancelled and the agent is an individual.
- (3) The court must also order that the agent is disqualified for a stated period or permanently from either or both of the following—
  - (a) holding a licence under an Agents Act;
  - (b) performing a debt collection activity as authorised under the *Debt Collectors (Field Agents and Collection Agents) Act 2014*, section 19, in the carrying on of a business, either alone or with others.

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- (4) The court may also order that a person convicted of an offence against this Act be disqualified from holding a licence under an Agents Act for a stated period or permanently.
- (5) The court may make an order under subsection (1) or (4)—
  - (a) on the chief executive's application; or
  - (b) on its own initiative.
- (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.

**146 Allegations of false or misleading representations or statements etc.**

In a 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'.

## **Part 12                      General**

**147 Application of particular provisions to appointees under an Agents Act**

- (1) This section applies in relation to an activity performed by an appointee for an agent.
- (2) Parts 2 and 3 apply to the appointee as if the appointee were the agent.
- (3) In this section—

*appointee* means an appointee within the meaning of the following—

- (a) the *Debt Collectors (Field Agents and Collection Agents) Act 2014*, section 6(1);

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- (b) the *Motor Dealers and Chattel Auctioneers Act 2014*, section 7(1);
  - (c) the *Property Occupations Act 2014*, section 6(1).

#### **148 Public warning statements**

- (1) The Minister or chief executive may make a public statement identifying and giving warnings or information about the commission of offences against this Act and persons who commit the offences.
- (2) The statement may identify particular offences and persons.
- (3) The Minister or chief executive must not make or issue a statement under this section unless satisfied it is in the public interest to do so.

#### **149 Civil remedies not affected**

Nothing in this Act affects or limits a civil remedy that a person may have against an agent or another person for a matter.

#### **150 Criminal Proceeds Confiscation Act 2002 not limited**

Nothing in this Act limits the *Criminal Proceeds Confiscation Act 2002*.

#### **151 Delegation—chief executive**

- (1) The chief executive may delegate the chief executive's powers, other than power under section 115 or 148, to an appropriately qualified public service employee.
- (2) In subsection (1)—  
*appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

the level at which a person is employed within the department

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## 152 Approved forms

The chief executive may approve forms for use under this Act.

## 153 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made about the following—
  - (a) ways in which amounts may be paid from a trust account;
  - (b) the audit of trust accounts and documents;
  - (c) the keeping of records, including the form in which records are to be kept;
  - (d) the keeping of receipts and evidence of expenditure;
  - (e) the length of time documents required to be kept under this Act are to be kept;
  - (f) imposing a penalty for a contravention of a regulation of not more than 20 penalty units.

# Part 13 Transitional provisions

## 154 Definition for pt 13

In this part—

*commencement* means the day this section commences.

## 155 Claim fund

- (1) The rights and liabilities of the claim fund under the repealed Act (the *former fund*) are taken to be the rights and liabilities of the claim fund under this Act (the *current fund*).

- (2) A claim that has been made against the former fund, and not finished before the commencement, continues as if it were a claim against the current fund.
- (3) A person who could have made a claim against the former fund but did not make the claim before the commencement may make the claim against the current fund under this Act, if the time allowed for bringing the proceeding under the repealed Act has not expired.
- (4) If, before the commencement, the chief executive had started a proceeding to recover an amount paid out of the former fund, the proceeding is taken to have been started by the chief executive under this Act as if the amount had been paid out of the current fund.
- (5) If, had the repealed Act not been repealed, the chief executive could start a proceeding to recover an amount paid out of the former fund, the chief executive may start the proceeding as if the amount had been paid out of the current fund.
- (6) This Act applies to a proceeding under subsection (4) or (5), with necessary changes.

## **156 Existing special investigators**

A person who, immediately before the commencement, held an appointment as a special investigator under the repealed Act is taken, on the commencement, to be appointed as a special investigator under this Act.

## **157 Continuation of reviews under the repealed Act**

- (1) Subsection (2) applies if—
  - (a) a person applied to QCAT under the repealed Act, section 483 or 501 for a review of a decision of the chief executive; and
  - (b) the review had not been decided before the commencement.

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- (2) QCAT may hear, or continue to hear, and decide the review under the repealed Act as if that Act had not been repealed.
- (3) Subsection (4) applies if—
  - (a) a person could have applied under the repealed Act, section 483 or 501 for a review of a decision of the chief executive; but
  - (b) the person had not applied before the commencement.
- (4) The person may apply for a review of the decision under the repealed Act as if that Act had not been repealed.

## **158 Proceedings**

- (1) This section applies to a proceeding that has, or could have, been started under the repealed Act because of an event that happened before the commencement, if the proceeding is about an event for which a legal proceeding can be started under this Act.
- (2) If the proceeding was brought under the repealed Act and has not been finished before the commencement, the proceeding may be continued and finished under the repealed Act.
- (3) Subsection (4) applies if—
  - (a) the proceeding had not, but could have, been started under the repealed Act; and
  - (b) the time allowed for bringing the proceeding has not expired.
- (4) The proceeding may be started under this Act.

## **159 Injunctions relating to pre-commencement conduct**

- (1) An injunction granted by the District Court under the repealed Act and in force immediately before the commencement continues from the commencement according to its terms, as if it had been granted under part 10, division 1.
- (2) In addition to the grounds in section 125, the District Court may grant an injunction under part 10 if the court is satisfied a



person has, before the commencement, engaged in conduct that constituted—

- (a) a contravention of the repealed Act; or
- (b) an attempt to contravene the repealed Act; or
- (c) aiding, abetting, counselling or procuring a person to contravene the repealed Act; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the repealed Act; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the repealed Act; or
- (f) conspiring with others to contravene the repealed Act.

## **160 Undertakings relating to pre-commencement conduct**

- (1) An undertaking given by a person to the chief executive under the repealed Act, and in force immediately before the commencement, continues from the commencement as an undertaking according to its terms as if it were given under part 10, division 2.
- (2) The provisions of this Act relating to undertakings apply to an undertaking continued under subsection (1).
- (3) If the chief executive reasonably believes a person has, before the commencement, contravened or been involved in a contravention of the repealed Act, section 131 of this Act applies as if a reference in that section to this Act were a reference to the repealed Act.

## **161 Continuation of register of undertakings**

The register of undertakings kept under the repealed Act is continued in existence and taken to be the register of undertakings under this Act.

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## **162 Existing approved financial institutions**

A financial institution that, immediately before the commencement, was an approved financial institution under the repealed Act, is taken from the commencement to be an approved financial institution under this Act.

## **163 Existing agreements with financial institutions**

- (1) This section applies to an agreement entered into between the chief executive and an approved financial institution under the repealed Act about the keeping of general trust accounts by licensees that is in force immediately before the commencement.
- (2) From the commencement, the agreement is taken to be an agreement entered into between the chief executive and a financial institution about the keeping of general trust accounts by agents under this Act.

## **164 Existing trust accounts**

A general trust account or special trust account opened under the repealed Act, and still open immediately before the commencement, is taken from the commencement to be a general trust account or special trust account under this Act.

## **165 Existing auditors**

- (1) Subsection (2) applies if, immediately before the commencement, a person was appointed as an approved auditor for a stated licensee under the repealed Act, section 394.
- (2) The following applies—
  - (a) the person's appointment as an auditor continues under the repealed Act; and
  - (b) the repealed Act, chapter 12, part 2, division 2 continues to apply in relation to the auditor until the auditor's appointment ends under those provisions.

- (3) Subsection (4) applies to an auditor other than an approved auditor appointed for a licensee under the repealed Act.
- (4) From the commencement, the person is taken to be an auditor under this Act, as if the person had been appointed by the agent under section 30.

### **166 New approved auditors**

- (1) This section applies if a person had applied to the chief executive to be an approved auditor for a licensee and immediately before the commencement the application had not been decided.
- (2) The repealed Act applies to the application as if it had not been repealed.
- (3) If the application is approved under the repealed Act, section 394, the person is taken to be an auditor under this Act, as if the person were appointed under section 30.

### **167 Existing audits**

- (1) This section applies if, immediately before the commencement, an audit had been started, but not completed, under the repealed Act.
- (2) From the commencement, the requirements for audits under the repealed Act continue to apply to the audit.

### **168 Existing disputes about trust money**

- (1) A dispute about trust money arising and not resolved before the commencement is taken to be a dispute arising under this Act.
- (2) For subsection (1), a written notice given or anything done or given under the repealed Act is taken to be a notice given or something done or given under this Act.

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## **169 Existing receivers**

- (1) A receiver over property appointed by the chief executive under the repealed Act whose appointment is in force immediately before the commencement, is taken, from the commencement, to be a receiver over the property appointed under this Act.
- (2) If the receiver is in possession of the property immediately before the commencement, the receiver is taken from the commencement to be in possession of the property under this Act.

## **170 Receivership property**

- (1) This section applies if, immediately before the commencement, an order was in force under the repealed Act for a person in possession of receivership property to give possession of it to a receiver.
- (2) From the commencement, the order is taken to have been made under this Act.

## **171 Proceedings for offences under the repealed Act**

- (1) This section applies if a person is alleged to have committed an offence against any of the following provisions of the repealed Act before the commencement—
  - (a) section 375(1) or (2), 376(1) or (2) or 377(2);
  - (b) section 379, 380(2) or 381(1) or (2);
  - (c) section 384(1) or (2), 385(1) or (4) or 386(1);
  - (d) section 388, 389 or 390(2);
  - (e) section 392(1), 396(2) or 397(2), (3) or (4);
  - (f) section 402(2), 404 or 405(3);
  - (g) section 406(2), 407(1) or 413(1) or (4);
  - (h) section 414, 420(5), 422(2);
  - (i) section 426, 428 or 436(2), (3) or (5);

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- (j) section 443(1), 475(2) or (5) or 493;
  - (k) section 495(2), 529A(6) or 558;
  - (l) section 580, 582(1), 583(1) or (3) or 591(2).
- (2) Without limiting the *Acts Interpretation Act 1954*, section 20, the following applies as if the repealed Act had not been repealed—
- (a) proceedings for the offence may be started, continued or completed under the repealed Act;
  - (b) a court may hear and decide the proceedings under the repealed Act;
  - (c) a document relevant to the proceedings and given evidentiary effect under the repealed Act continues to have the evidentiary effect.
- (3) Subsection (2) applies despite the Criminal Code, section 11.

## 172 Existing delegations

If, immediately before the commencement, a power of the chief executive had been delegated under section 597 of the repealed Act to a person, the person is taken, from the commencement, to hold an equivalent delegation under this Act.

## 173 Chief executive may accept PAMDA forms approved

- (1) The chief executive may accept a PAMDA form that corresponds to an approved form mentioned in section 86(1)(a), 88(2) or 89(2), instead of the approved form.
- (2) In this section—

*PAMDA form* means an approved form under the repealed Act in force immediately before the commencement.

## Schedule 1 Dictionary

### section 7

**account**, for part 4, see section 41.

**agent**—

- (a) generally—see section 8; and
- (b) for part 3, division 3—see section 33; and
- (c) for part 4—see section 41; and
- (d) for part 7—see section 80.

**Agents Act** means the following—

- (a) the *Debt Collectors (Field Agents and Collection Agents) Act 2014*;
- (b) the *Motor Dealers and Chattel Auctioneers Act 2014*;
- (c) the *Property Occupations Act 2014*.

**amount in dispute** see section 25(1)(b).

**approved financial institution** means a financial institution that has entered into an agreement with the chief executive under section 14.

**arrangement** includes agreement, promise, scheme, transaction (with or without consideration), understanding and undertaking (whether express or implied).

**audit month**, for part 3, division 3, see section 33.

**auditor**, for part 3, see section 29.

**audit period**, for part 3, division 3, see section 33.

**audit report**, for part 3, division 3, see section 33.

**chattel auctioneer**, for part 7, see section 80.

**claimant**, for part 7, see section 80.

**claim fund** means the claim fund established under section 78.

***claim notice***, for part 7, see section 80.

***client***, of an agent, means the person who appoints the agent to perform an activity.

***collection agent*** means a collection agent under the *Debt Collectors (Field Agents and Collection Agents) Act 2014*.

***conviction*** 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.

***defalcation***, for part 4, see section 41.

***employ*** includes—

- (a) engage on a contract for services or commission and use the services of, whether or not for reward; and
- (b) directly engage a person as an independent contractor; and
- (c) engage a person from a labour hire provider.

***executive officer***, for a corporation, means a 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.

***financial loss***, for part 7, see section 80.

***former licensee*** means a person who held a licence under this Act or the repealed Act.

***FTI Act*** see section 5(1).

***fund*** means the claim fund.

***holder***—

- (a) of an account, means the agent or other person authorised to operate on the account; or
- (b) of a licence, means the person in whose name the licence is issued.

***in charge***, of an agent's business, means in charge within the meaning of the Agents Act under which the agent conducts the business.

***inspector*** means a person who holds office under the FTI Act as an inspector for this Act.

***licence*** means a licence issued under an Agents Act.

***licensed***, for a person, means licensed under an Agents Act.

***licensee*** means the holder of a licence under an Agents Act, that is in force.

***marketeering contravention***, for part 7, see section 80.

***misleading*** includes deceptive.

***money***, for part 4, see section 41.

***motor dealer***, for part 7, see section 80.

***motor vehicle***, for part 7, see section 80.

***non-investment residential property*** see section 81.

***obstruct*** includes hinder, delay and attempt to obstruct.

***on-sale*** see section 110(1).

***parties***, to a claim, see section 96(2).

***principal agent*** means the following—

- (a) if the agent is a licensee—a licensee that carries on business under the licensee's licence on the licensee's own behalf;
- (b) a collection agent that carries on business as a collection agent on the agent's own behalf.

***receiver*** means a receiver appointed under section 50.

***receivership property***, for part 4, see 50(2).

***registered office*** see section 80.

***relevant activity***, for a debt collector for part 7, see section 80.

***relevant person***, for part 7, see section 80.

***repealed Act*** means the *Property Agents and Motor Dealers Act 2000*.

***representation*** means a statement, promise, publication and other representation made in any way.



**residential property** see section 80.

**respondent**—

- (a) for part 7, see section 80; and
- (b) for part 8, see section 117(2); and
- (c) for part 10, see section 125.

**reward** includes remuneration of any kind including, for example, any fee, commission or gain.

**sell** 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.

**special investigator** means a special investigator appointed under section 70.

**special payment** see section 115.

**trust account** means a trust account kept under this Act.

**trust money** includes an amount that was, or ought, under this Act, to have been, deposited in a trust account by an agent.

**trust property**, for part 4, see section 41.