



Property Occupations Act 2014

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Queensland

Property Occupations Act 2014

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Property Occupations Act 2014

An Act to provide for the regulation of the activities, licensing and conduct of property agents and resident letting agents and their employees and to protect consumers against particular undesirable practices

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Property Occupations Act 2014*.

2 Commencement

This Act, other than part 16, commences on a day to be fixed by proclamation.

3 Act binds all persons

- (1) This Act binds all persons, including the State and, as far as the legislative power of the 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 Relationship with Fair Trading Inspectors Act 2014

- (1) The *Fair Trading Inspectors Act 2014* enacts common provisions for this Act and particular other Acts about fair trading.
- (2) Unless this Act otherwise provides in relation to the *Fair Trading Inspectors Act 2014*, the powers that an inspector has under that Act are in addition to and do not limit any powers the inspector may have under this Act.

Note—

See also the modifying provision for this Act stated in the *Fair Trading Inspectors Act 2014*, section 6.

Division 2 Exemptions

5 Particular auctions

- (1) Parts 3 and 4 and part 6, divisions 1 and 2 to the extent they relate to a property agent do not apply to—
 - (a) a sale made under a rule, order, or judgment of the Supreme Court or District Court; or
 - (b) a sale made by a person obeying an order of, or a process issued by, a court, judge or justice, or the registrar of the State Penalties Enforcement Registry for the recovery of a fine, penalty or award; or
 - (c) a sale of an animal lawfully seized and sold under the *Animal Care and Protection Act 2001* or another law about seizing or impounding an animal; or
 - (d) a sale conducted for a charity, a religious denomination or an organisation formed for a community purpose, within the meaning of the *Collections Act 1966* (**relevant entity**) if—
 - (i) the person conducting the sale does not receive from the relevant entity a reward for the person's services; and

- (ii) amounts received from the sale are paid directly to an officer or employee of the relevant entity who is authorised by the relevant entity to receive and deal with the amounts.

(2) In this section—

sale means a sale, attempted sale or an offering for sale or resale, by way of auction.

6 Administrators etc.

(1) This section applies to the following persons (each an *appointee*)—

- (a) a person appointed under the Corporations Act as an administrator of a corporation that is or was authorised under a licence or former licence to perform an activity;
- (b) a person appointed under the Corporations Act as an administrator of a deed of company arrangement for a corporation that is or was authorised under a licence or former licence to perform an activity;
- (c) a person appointed under the Corporations Act as a liquidator, or controller of property, of a corporation that is or was authorised under a licence or former licence to perform an activity;
- (d) a person appointed under the Administration Act as a receiver for property of an entity that is or was authorised under a licence or former licence to perform an activity;
- (e) a person appointed under the *Bankruptcy Act 1966* (Cwlth) as the trustee in bankruptcy, or the Official Receiver, for an individual who is or was authorised under a licence or former licence to perform an activity.

(2) The appointee is exempt from the provisions mentioned in subsection (3) while performing the activity in relation to a business that is or was authorised to be carried on under—

- (a) for a licence that is in force— the licence; or

- (b) for a former licence that is not in force—the former licence immediately before it stopped being in force.
- (3) For subsection (2), the provisions are—
 - (a) sections 84 and 85; and
 - (b) part 3, division 2; and
 - (c) sections 97, 100 and 102.
- (4) In this section—

former licence means a licence that was previously in force.

person appointed as the trustee in bankruptcy, for an individual, includes the Official Trustee in Bankruptcy under the *Bankruptcy Act 1966* (Cwlth) if the Official Trustee is the trustee in bankruptcy for the individual.

7 Related entities

An entity (*exempt entity*) is exempt from this Act if the entity—

- (a) carries on the business of a property agent or resident letting agent in relation to assets, other than residential property, of—
 - (i) another entity the majority of which is directly or indirectly owned by the exempt entity; or
 - (ii) another entity, if the majority of both entities is directly or indirectly owned by the same persons; or
 - (iii) another entity that directly or indirectly owns the majority of the exempt entity; and
- (b) is a property agent or resident letting agent only because of the business carried on by it in relation to the assets; and
- (c) when carrying on that business as a property agent or resident letting agent discloses in writing in any advertising or contract relating to the assets its relationship to the owner of the assets.

8 Large scale non-residential property transactions or holdings

- (1) A person acting as a property agent for the sale or exchange of real property, other than residential property or rural land, is exempt from this Act for the transaction if—
 - (a) the real property for the transaction has—
 - (i) a total gross floor area of at least the area prescribed under a regulation; or
 - (ii) a total estimated value of at least the amount prescribed under a regulation; or
 - (b) each party to the transaction owns real property, other than the real property for the transaction, that has—
 - (i) a total gross floor area of at least the area prescribed under a regulation; or
 - (ii) a total estimated value of at least the amount prescribed under a regulation.
- (2) A person acting as a property agent or resident letting agent for the letting of real property or collecting rents for real property, other than residential property or rural land, is exempt from this Act if the person is acting on behalf of an entity that owns real property that has—
 - (a) a total gross floor area of at least the area prescribed under a regulation; or
 - (b) a total estimated value of at least the amount prescribed under a regulation.
- (3) To remove any doubt, it is declared that, without limiting subsection (2), the subsection applies if the person is acting as a property agent or resident letting agent for 2 or more entities engaged in a joint venture arrangement and the entities, individually or collectively, own real property that has—
 - (a) a total gross floor area of at least the area prescribed under a regulation; or
 - (b) a total estimated value of at least the amount prescribed under a regulation.

(4) In this section—

estimated value, of real property, means the estimate, made on reasonable grounds by the person acting as—

- (a) a property agent for the sale of the property, of the price payable for the property; or
- (b) a property agent for the exchange of the property, of the value of the property; or
- (c) a property agent or resident letting agent for the letting of the property or collecting rents for the property, of the value of the property.

rural land means land used, intended to be used, or apparently intended to be used, for gain or profit, for grazing livestock or cultivating crops.

9 Other exemptions from this Act

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

10 Financial institutions and trustee companies

- (1) Parts 3 and 4 and part 6, divisions 1 and 2 to the extent they relate to a property agent do not apply to a financial institution or trustee company.
- (2) In this section—

trustee company means—

- (a) a trustee company under the *Trustee Companies Act 1968*; or
- (b) the public trustee when the public trustee is—
 - (i) performing the activities that may be performed by a trustee company; or

- (ii) exercising the powers that may be exercised by a trustee company; or
- (iii) holding an office that may be held by a trustee company.

11 Non-profit corporations

- (1) A non-profit corporation is exempt from parts 3 and 4 and part 6, divisions 1 and 2 if—
 - (a) the corporation provides or locates—
 - (i) affordable rental housing under an affordable housing scheme; or
 - (ii) approved supported accommodation; and
 - (b) the providing or locating of the housing or accommodation is funded or managed by the Commonwealth, a State or a local government.
- (2) Subsection (1) does not apply if the non-profit corporation is otherwise carrying on the business of a resident letting agent or property agent.
- (3) To remove any doubt, it is declared that a corporation does not stop being a non-profit corporation only because it receives a reward for providing its services to another non-profit corporation.
- (4) In this section—

affordable housing scheme see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

approved supported accommodation see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

non-profit corporation means a corporation formed for a purpose other than the purpose of making a profit.

Division 3 Objects of Act

12 Objects

- (1) The objects of this Act are—
 - (a) to provide a system for licensing and regulating persons as property agents or resident letting agents and for registering and regulating persons as real estate salespersons that achieves an appropriate balance between—
 - (i) the need to regulate for the protection of consumers; and
 - (ii) the need to promote freedom of enterprise in the market place; and
 - (b) to provide a way of protecting consumers against particular undesirable practices associated with the promotion of residential property.
- (2) The objects are to be achieved by—
 - (a) ensuring—
 - (i) only suitable persons with appropriate qualifications are licensed or registered; and
 - (ii) persons who carry on business or are in charge of a licensee's business at a place under the authority of a licence maintain close personal supervision of the way the business is carried on; and
 - (b) providing—
 - (i) protection for consumers in their dealings with licensees and their employees; and
 - (ii) a legislative framework within which persons performing activities for licensees may lawfully operate; and
 - (c) regulating fees and commissions that can be charged for particular transactions; and

- (d) providing protection for consumers in their dealings with marketeers; and
- (e) providing for the enforcement of matters involving marketeers; and
- (f) providing increased flexibility in enforcement measures through injunctions, undertakings, and, for contraventions by marketeers, preservation of assets and civil penalties; and
- (g) promoting administrative efficiency by providing that—
 - (i) responsibility for licensing rests with the chief executive; and
 - (ii) responsibility for reviewing particular decisions of the chief executive rests with QCAT; and
 - (iii) responsibility for disciplinary matters rests with QCAT.

Division 4 Interpretation

13 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

14 Who is an *auctioneer*

An *auctioneer* is a person who holds an auctioneer licence authorising the performance of the activities mentioned in section 25.

15 Who is a *property agent*

A *property agent* is an auctioneer or a real estate agent.

16 Who is a *real estate agent*

A *real estate agent* is a person who holds a real estate agent licence authorising the performance of the activities mentioned in section 26.

17 Who is a *resident letting agent*

A *resident letting agent* is a person who holds a resident letting agent licence authorising the performance of the activities mentioned in section 27.

18 Meaning of *completes a residential property sale*

- (1) A person *completes* a residential property sale if a residential property in which the person has an interest is sold, whether or not a transfer to the purchaser under the sale has been registered.
- (2) However, the person is not to be taken to have completed a residential property sale if—
 - (a) the person appointed a property agent to sell the interest in the residential property on the person's behalf and the property agent is the effective cause of the sale; or
 - (b) the person held the interest in the residential property as—
 - (i) a personal representative; or
 - (ii) an administrator under the *Guardianship and Administration Act 2000*; or
 - (iii) a beneficiary in, or a trustee of, a deceased person's estate; or
 - (iv) a mortgagee; or
 - (c) the person is a corporation and the corporation sold the corporation's interest in the residential property to a related body corporate of the corporation; or
 - (d) the interest in the residential property is sold under a court order.

(3) In this section—

related body corporate see the Corporations Act, section 9.

19 Meaning of *in charge*

(1) A person is *in charge* of a licensee's business at a place where the licensee carries on business only if the person personally supervises, manages or controls the conduct of the licensee's business at the place.

(2) In this section—

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

20 Meaning of *open listing*

An *open listing* is a written agreement entered into between a person (*seller*) and a property agent (*selling agent*) under which the seller appoints the selling agent, in accordance with the terms of the agreement, to sell stated property and under the agreement—

- (a) the seller retains a right—
 - (i) to sell the seller's property during the term of the agreement; or
 - (ii) to appoint additional property agents as selling agents to sell the property on terms similar to those under the agreement; and
- (b) the appointed selling agent is entitled to remuneration only if he or she is the effective cause of sale; and
- (c) the appointment of the selling agent can be ended, at any time, by either—
 - (i) the seller giving the selling agent written notice of the ending of the appointment; or
 - (ii) the selling agent giving the seller written notice of the ending of the appointment.

21 Meaning of *residential property*

Residential property is real property that is used, or is intended to be used, for residential purposes but does not include real property that is used primarily for the purposes of industry, commerce or primary production.

22 Meaning of *unsolicited invitation*

- (1) An *unsolicited invitation* to a person to attend a property information session includes an invitation—
 - (a) addressed personally to the person and sent to the person’s residential, business, postal or email address; or
 - (b) made by telephoning the person, or by another personal approach to the person.
- (2) An invitation to a person to attend a property information session is not an unsolicited invitation if it is—
 - (a) made at the person’s request, other than in response to an approach of a kind mentioned in subsection (1)(b); or
 - (b) made to the public generally or a section of the public by media advertisement; or
 - (c) addressed non-specifically and sent to the person’s residential, business, postal or email address.

Examples of invitations addressed non-specifically—

- ‘The owner’
- ‘The householder’

23 Difference between *exclusive agency* and *sole agency*

- (1) The only difference between an *exclusive agency* and a *sole agency* is the extent of the entitlement of a selling agent to receive an agreed commission or other reward on the sale of particular property.
- (2) Under an *exclusive agency*, a selling agent is entitled, on the sale of particular property and in accordance with the terms of an agreement with the seller of the property, to receive an

agreed commission or other reward, whether or not the selling agent is the effective cause of the sale.

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

Example—

Facts—S is the owner of a place of residence that S appoints R to sell. B buys the place of residence.

Assume for the example that in the following circumstances the following persons are the effective cause of the sale—

- case 1—R
- case 2—X (another property agent)
- case 3—M (S's mother)
- case 4—S.

If the selling agent is appointed under an exclusive agency, R is entitled to an agreed commission or other reward in accordance with the terms of R's agreement with S in cases 1, 2, 3 and 4. If the selling agent is appointed under a sole agency, R is entitled to an agreed commission or other reward in accordance with the terms of R's agreement with S only in cases 1, 2 and 3.

- (4) In this section—

seller, of property, means the person authorising the sale of the property.

selling agent, of property, means a property agent appointed under a written agreement under this Act by the seller to sell the property.

Part 2 Licensing

Division 1 Categories of licence

24 Categories of licence

The chief executive may issue the following categories of licence under this Act—

- (a) auctioneer licence;
- (b) real estate agent licence;
- (c) resident letting agent licence.

Note—

See also section 28.

Division 2 Auctioneer's authorisation

25 What an auctioneer licence authorises

- (1) An auctioneer licence authorises the holder of the licence to—
 - (a) sell or attempt to sell or offer for sale or resale any real property, or an interest in real property, by way of auction as an agent for others for reward; and
 - (b) sell the property or interest by any means during the auction period; and
 - (c) sell or attempt to sell or offer for sale or resale goods by way of auction if the sale or resale is directly connected with a sale by auction of a place of residence or land performed by the auctioneer.
- (2) For subsection (1)(c), an auction of goods may be directly connected with a sale by auction of a place of residence or land despite the auction of the goods being conducted separately from the auction of the place of residence or land.

Example—

An auction of a place of residence followed by an auction of the contents of the residence.

- (3) An auctioneer may perform an activity mentioned in subsection (1)—
 - (a) in the carrying on of a business, either alone or with others; or
 - (b) as an employee of a property agent.
- (4) In this section—

auction period, for an auctioneer for the sale of real property, means the period for which the auctioneer is appointed under section 102 or otherwise authorised or permitted under this Act or another Act to sell the property.

Division 3 Real estate agent’s authorisation and responsibility

26 What a real estate agent licence authorises

- (1) A real estate agent licence authorises the holder of the licence to perform the following activities as an agent for others for reward—
 - (a) to buy, sell (other than by auction), exchange or let real property or interests in real property;
 - (b) to buy, sell (other than by auction), exchange, or let businesses or interests in businesses;
 - (c) to negotiate for the buying, selling, exchanging, or letting of something mentioned in paragraph (a) or (b);
 - (d) to collect rents.
- (2) A real estate agent may perform the activities mentioned in subsection (1) in the carrying on of a business, either alone or with others, or as an employee of someone else.

- (f) provide any information the chief executive reasonably requires to decide whether the applicant is a suitable person to hold a licence.
- (2) The application must be accompanied by—
 - (a) the application fee prescribed under a regulation; and
 - (b) the licence issue fee prescribed under a regulation; and
 - (c) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid.

31 Applicant must state business address

- (1) The applicant must also state in the applicant's application—
 - (a) if the applicant intends carrying on business under the licence immediately after the issue of the licence—the place or places in Queensland where the applicant proposes to carry on business under the licence; or
 - (b) if the applicant does not intend carrying on business under the licence immediately after the issue of the licence—
 - (i) the capacity in which the applicant intends performing activities under the licence and the address where the activities are to be performed (*business address*); and
 - (ii) if the applicant intends to be a person in charge of a licensee's business at a place of business—the name of the applicant's employer and the address of the place of business where the applicant is to be in charge (also a *business address*).

Examples of capacity in which activities may be performed—

- person in charge of a corporation's business
- licensed employee of a licensee

Example of business address of an employed licensee—

the address of the person's employer's place of business where the person generally reports for work

- (2) If the applicant intends to carry on business under the licence at more than 1 place, the applicant must state in the application the place the applicant intends to be the applicant's principal place of business.
- (3) A place of business or an address under this section must be a place where a document can be served personally.
- (4) A place of business or an address must not be a post office box.

32 Particular persons can not make application

- (1) A disqualified person can not make an application for a licence during the period for which the disqualified person is disqualified.
- (2) A corporation that was the holder of a licence that was cancelled can not make an application for a licence unless the corporation satisfies the chief executive that, because of a genuine sale—
 - (a) no person who was a shareholder of, or held a beneficial interest in, the corporation when the licence was cancelled is a shareholder of, or holds a beneficial interest in, the corporation; and
 - (b) no person who was in a position to control or influence the affairs of the corporation when the licence was cancelled is in a position to control or influence the affairs of the corporation.
- (3) A person who made an application for a licence that was refused can not make an application for a licence of the same category as the licence for which the person applied—
 - (a) for 3 months after the day the chief executive gives the person an information notice for the decision; or
 - (b) if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed—for 3 months after the day the decision is confirmed.
- (4) Subsection (3) does not apply if—

- (a) the 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 corporation; and
 - (ii) no person who was in a position to control or influence the affairs of the corporation when the refused application was made is in a position to control or influence the affairs of the corporation.
- (5) In this section—

disqualified person means a person who, as a consequence of an order made by QCAT under section 186 or 188 or a court under section 227 or 228, is disqualified from holding a licence.

33 Requirement to give information or material about application or request

- (1) This section applies to each of the following—
 - (a) an applicant for a licence;
 - (b) an applicant for renewal of a licence;
 - (c) an applicant for restoration of a licence;
 - (d) an applicant for the appointment or extension of the appointment of a nominated person mentioned in section 66(3) or 67(4) as a licensee’s substitute licensee;
 - (e) a licensee who has asked the chief executive to reactivate the licensee’s licence.
- (2) The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to decide the application or request.

Example of that information or material—

information or material the chief executive reasonably considers is needed to establish the applicant's or licensee's suitability for the licence

- (3) The applicant or licensee is taken to have withdrawn the application or request if, within the stated reasonable period, the applicant or licensee fails to comply with the chief executive's requirement.

Division 8 Suitability of applicants and licensees

34 Suitability of applicants and licensees—individuals

- (1) An individual is not a suitable person to hold a licence if the individual is—
 - (a) an insolvent under administration; or
 - (b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
 - (c) currently disqualified from holding a licence or registration certificate; or
 - (d) a person the chief executive decides under section 36 is not a suitable person to hold a licence.
- (2) An individual who is not a suitable person to hold a licence can not hold a licence.

35 Suitability of applicants and licensees—corporations

- (1) A corporation is not a suitable person to hold a licence if the corporation—
 - (a) has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
 - (b) is currently disqualified from holding a licence; or

- (c) is a person the chief executive decides under section 36 is not a suitable person to hold a licence.
- (2) A corporation is also not a suitable person to hold a licence if an executive officer of the corporation—
 - (a) is an insolvent under administration; or
 - (b) has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
 - (c) is currently disqualified from holding a licence or registration certificate; or
 - (d) is a person the chief executive decides under section 36 is not a suitable person to hold a licence.
- (3) A corporation that is not a suitable person to hold a licence can not hold a licence.

36 Chief executive must consider suitability of applicants and licensees

- (1) The chief executive must consider the following things in deciding whether a person is a suitable person to hold a licence—
 - (a) the character of the person;
 - (b) the character of the person's business associates;
 - (c) whether the person held a licence or registration certificate under a relevant Act that was suspended or cancelled under the relevant Act;
 - (d) whether an amount has been paid from the fund because the person did, or omitted to do, something that gave rise to the claim against the fund;
 - (e) whether the person has been disqualified under a relevant Act from being the holder of a licence, registration certificate or similar authorisation;
 - (f) whether the person has been disqualified from managing corporations under the Corporations Act;

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- (g) whether, within the preceding 5 years, QCAT, the former tribunal or the District Court has made an order under this Act or PAMDA adverse to the person;
 - (h) for an individual—
 - (i) the individual’s criminal history; and
 - (ii) whether the individual has been an insolvent under administration; and
 - (iii) whether the individual has been convicted of an offence against a relevant Act or the Administration Act; and
 - (iv) whether the individual is capable of satisfactorily performing the activities of a licensee; and
 - (v) whether the individual’s name appears in the register of persons disqualified from managing corporations under the Corporations Act;

Note—

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

- (i) for a corporation—
 - (i) whether the corporation has been placed in receivership or liquidation; and
 - (ii) whether an executive officer of the corporation has been an insolvent under administration; and
 - (iii) whether the corporation or an executive officer of the corporation has been convicted of an offence against a relevant Act or the Administration Act; and
 - (iv) whether each executive officer of the corporation is a suitable person to hold a licence;
 - (j) another thing the chief executive may consider under this Act.
- (2) If the chief executive decides a person is not a suitable person to hold a licence, the chief executive must give the person an

information notice about the decision within 14 days after making the decision.

(3) In this section—

fund includes the claim funds under PAMDA and the repealed *Auctioneers and Agents Act 1971*.

relevant Act means this Act, an Agents Act, PAMDA or a corresponding law.

37 Public trustee is a suitable person

The corporation sole called The Public Trustee of Queensland is taken to be a suitable person to hold a licence.

38 Chief executive of department is a suitable person

The chief executive of a department is taken to be a suitable person to hold a licence.

39 Defence Housing Australia is a suitable person

Defence Housing Australia is taken to be a suitable person to hold a licence.

40 Investigations about suitability of applicants and licensees

(1) The chief executive may make investigations about the following persons to help the chief executive decide whether a person is a suitable person to hold a licence—

- (a) an applicant mentioned in section 33(1) or a licensee;
- (b) if the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction;

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- (c) if the applicant or licensee is a corporation—the corporation’s executive officers;
 - (d) a business associate of the applicant or licensee.
- (2) Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a report about the criminal history of any of the persons.
 - (3) The commissioner must give the report to the chief executive.
 - (4) However, the report is required to contain only criminal history in the commissioner’s possession or to which the commissioner has access.
 - (5) If the person’s criminal history includes a conviction recorded against the person, the commissioner’s report must be written.
 - (6) In this section—
applicant includes a nominated person mentioned in section 66(3) or 67(4).

41 Notice of change in criminal history

- (1) This section applies if the commissioner of the police service reasonably suspects the criminal history of either of the following persons has changed—
 - (a) a person who is the holder of a licence;
 - (b) a person who is a nominated person mentioned in section 66(3) or 67(4) appointed as a substitute licensee or as a substitute real estate salesperson.
- (2) The commissioner may notify the chief executive the person’s criminal history has changed.
- (3) The notice must state the following—
 - (a) the person’s name and any other name the commissioner believes the person may use or may have used;
 - (b) the person’s date and place of birth;

- (c) a brief description of the nature of the offence giving rise to the conviction or charge to which the change relates.
- (4) The chief executive may confirm the commissioner's suspicions under subsection (1).
- (5) For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.
- (6) In this section—
criminal history, in relation to a person, includes a charge of an offence laid against a person that has not been dismissed.
offence includes alleged offence.

42 Costs of criminal history report

- (1) The chief executive may require an applicant mentioned in section 33(1) or a licensee to pay the reasonable, but no more than actual, costs of obtaining a report under section 40 about—
 - (a) the applicant or licensee; or
 - (b) if the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction with others—each person with whom the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction; or
 - (c) if the applicant or licensee is a corporation—the corporation's executive officers; or
 - (d) a business associate of the applicant or licensee; or
 - (e) if the applicant has made an application under section 66(3) or 67(4)—the person nominated by the applicant under section 66(3) or 67(4).
- (2) The requirement is a *criminal history costs requirement*.
- (3) The chief executive may notify the applicant or licensee of the requirement to pay a criminal history costs requirement—

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- (a) in the approved form; or
 - (b) on the department's website; or
 - (c) in a written notice given by the chief executive to the applicant or licensee.
- (4) If the criminal history costs requirement is made in a written notice given by the chief executive to the applicant or licensee, the notice must include a requirement for the costs to be paid within a stated reasonable period.
- (5) The applicant or licensee is taken to have withdrawn the application if, within the stated reasonable period, the applicant or licensee fails to comply with the chief executive's requirement to pay the criminal history costs requirement.
- (6) The chief executive must refund to the applicant or licensee an amount paid under the requirement if—
- (a) the chief executive refuses the application without asking for the report; or
 - (b) the applicant or licensee withdraws the application before the chief executive asks for the report.
- (7) In this section—
applicant includes proposed applicant.

43 Use of information obtained under s 40 or 41

- (1) Subsection (2) applies to the chief executive in considering information about a person obtained under section 40 or 41.
- (2) Information about a conviction of the person may be used only for making a decision as to whether the person is, or continues to be, a suitable person to hold a licence.
- (3) Subsection (4) applies to the chief executive in considering information about a person obtained under section 41.
- (4) Information about a charge against the person may not be relied on as a basis for making a decision as to whether the person is, or continues to be, a suitable person to hold a licence.

44 Confidentiality of criminal history

- (1) A public service employee performing functions under this Act must not, directly or indirectly, disclose to anyone else—
 - (a) a report about a person’s criminal history, or information contained in the report, given under section 40; or
 - (b) any of the contents of a notice given under section 41(2).

Maximum penalty—100 penalty units.

- (2) However, the person does not contravene subsection (1) if—
 - (a) disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under or relating to this Act; or
 - (b) the disclosure is otherwise required or permitted by law.
- (3) The chief executive must destroy the following as soon as practicable after considering the person’s suitability to hold a licence—
 - (a) a written report about the person’s criminal history;
 - (b) a notice given under section 41(2) about the person.

Division 9 Eligibility for licence

Subdivision 1 Property agent licence

45 Eligibility for property agent licence

- (1) An individual is eligible to obtain a property agent licence only if the individual—
 - (a) is at least 18 years; and
 - (b) has the educational or other qualifications generally approved by the chief executive for a property agent licence.

Note—

The qualifications are stated on the department’s website.

- (2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—
 - (a) has a comparable qualification to the qualification mentioned in subsection (1)(b); or
 - (b) within 2 years before the day the individual’s application for a property agent licence is received by the chief executive—
 - (i) either—
 - (A) if the licence applied for is an auctioneer licence—has been licensed as an auctioneer; or
 - (B) if the licence applied for is a real estate agent licence—has been licensed as a real estate agent; or
 - (ii) has been the holder of a comparable licence under PAMDA.
- (3) A corporation is eligible to obtain an auctioneer licence only if a person in charge of the corporation’s auctioneer business is an auctioneer.
- (4) A corporation is eligible to obtain a real estate agent licence only if a person in charge of the corporation’s real estate agency business is a real estate agent.

Subdivision 2 Resident letting agent licence

46 Eligibility for resident letting agent licence

- (1) An individual is eligible to obtain a resident letting agent licence for a building complex only if the individual—
 - (a) is at least 18 years; and

[s 47]

- (b) has the educational or other qualifications generally approved by the chief executive for a resident letting agent licence.

Note—

The qualifications are stated on the department's website.

- (2) An individual is taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—
 - (a) has a comparable qualification to the qualification mentioned in subsection (1)(b); or
 - (b) within 2 years before the day the individual's application for a resident letting agent licence is received by the chief executive—
 - (i) has been licensed as a resident letting agent or real estate agent; or
 - (ii) has been the holder of a comparable licence under PAMDA.
- (3) A corporation is eligible to obtain a resident letting agent licence only if a person in charge of the corporation's business is a resident letting agent.

Subdivision 3 Particular government entities

47 Public trustee is eligible for licence

The public trustee as a corporation sole is taken to be eligible for a licence.

48 Chief executive of department is eligible for licence

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

49 Defence Housing Australia is eligible for licence

Defence Housing Australia is taken to be eligible for a licence.

Division 10 Issue of licences

50 Chief executive may issue or refuse to issue licence

- (1) The chief executive may decide to issue or refuse to issue a licence to an applicant.
- (2) The chief executive may decide to issue a licence to an applicant only if the chief executive is satisfied—
 - (a) the applicant is a suitable person to hold a licence and—
 - (i) if the applicant intends carrying on business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant intends carrying on business in conjunction is a suitable person to hold a licence; and
 - (ii) if the applicant is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
 - (b) the applicant is eligible for a licence of the category of licence being applied for; and
 - (c) the application is made under sections 30 and 31.
- (3) If the chief executive decides to refuse to issue the licence, the chief executive must give the applicant an information notice about the decision within 14 days after making the decision.

51 Licence—public trustee

- (1) The chief executive may issue a licence to the public trustee in the public trustee's capacity as a corporation sole in the name 'The Public Trustee of Queensland'.

- (2) A licence issued to the public trustee authorises an officer or employee of the public trustee to perform any activity authorised by the public trustee that the public trustee may perform under the licence.
- (3) To remove any doubt, it is declared that an officer or employee performing an activity authorised by the public trustee is not required to be licensed or registered under this Act to perform the activity.

52 Licence—chief executive of department

- (1) The chief executive may issue a licence to the chief executive of a department in the name ‘The Chief Executive of the (name of department)’.
- (2) The licence is taken to be issued to the chief executive for the time being of the department.
- (3) The chief executive of a department, as a licensee, is taken to represent the State.
- (4) A licence issued to the chief executive of a department authorises an officer or employee of the department of which the chief executive is chief executive to perform any activity authorised by the chief executive that the chief executive may perform under the licence.
- (5) To remove any doubt, it is declared that an officer or employee performing an activity authorised by the chief executive is not required to be licensed or registered under this Act to perform the activity.

53 Licence—Defence Housing Australia

- (1) The chief executive may issue a licence to Defence Housing Australia in the name ‘Defence Housing Australia’.
- (2) A licence issued to Defence Housing Australia authorises an officer or employee of the authority to perform any activity authorised by the authority that the authority may perform under the licence.

- (3) To remove any doubt, it is declared that an officer or employee performing an activity authorised by the authority is not required to be licensed or registered under this Act to perform the activity.

54 Licence—conditions

- (1) The chief executive may issue a licence on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence.
- (2) Without limiting subsection (1), a condition may—
 - (a) limit or prohibit the performance of an activity authorised under this Act or the Administration Act; or
 - (b) require a licensee to hold insurance of a kind and in an amount prescribed under a regulation.
- (3) If the chief executive decides to issue a licence on condition, the chief executive must give the applicant an information notice about the decision within 14 days after making the decision.

Division 11 Restrictions on performing activities under licences

55 Restriction—corporations

- (1) A corporation that holds a licence may perform an activity under its licence only if the activity may be performed by—
 - (a) a licensed person who is in charge of the corporation's business; or
 - (b) a person permitted under section 84(2)(b)(ii)(B) to be in charge of a particular place, if the activity is performed at that place; or
 - (c) a liquidator or controller appointed under the Corporations Act of property of the corporation; or

- (d) an administrator of the corporation appointed under the Corporations Act; or
 - (e) an administrator of a deed of company arrangement for the corporation appointed under the Corporations Act; or
 - (f) a receiver appointed under the Administration Act for property of the corporation.
- (2) However, subsection (1) does not prevent a corporation that holds a real estate agent licence selling or attempting to sell, or offering for sale or resale, any property by way of auction if the auction is conducted by an auctioneer who is an employed licensee of the corporation.
- (3) A corporation that is a former licensee may perform an activity authorised under the former licence if the activity is performed by a person mentioned in subsection (1)(b), (c), (d), (e) or (f).
- (4) If a corporation that holds a licence or is a former licensee performs an activity it is not authorised to perform, it is taken to be a person who acts as a licensee without a licence for the performance of the activity.
- (5) In this section—
- former licensee* means—
- (a) a licensee under a licence that was previously in force; or
 - (b) a licensee under an existing licence.

56 Restriction—individuals

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

Example—

E is a licensed employee of P, a property agent. E's licence is not subject to a condition. However, P's licence is subject to a condition

that P deal only in business letting. Because of the condition, E is only authorised to deal in business letting under E's licence during E's employment with P and while P is subject to the condition.

- (2) However, subsection (1) does not prevent an individual who holds an auctioneer licence selling or attempting to sell, or offering for sale or resale, any property by way of auction for the individual's licensed employer.
- (3) If the employed licensee performs an activity the employed licensee is not authorised to perform because of subsection (1), the employed licensee is taken to be a person who acts as a licensee without a licence for the performance of the activity.

57 Restriction—conditions

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

Note—

For the consequences of a licensee performing an activity that the licensee is not authorised to perform because of a condition on the licensee's licence, see sections 97 and 100.

Division 12 Renewal and restoration of licences

Subdivision 1 Renewal

58 Application for renewal

- (1) A licensee may only apply for renewal of the licensee's licence before the licence expires.
- (2) The application must—
 - (a) be made to the chief executive in the approved form; and

- (b) state the term of the licence being applied for; and
 - (c) state the names and addresses of the licensee's business associates; and
 - (d) be accompanied by—
 - (i) the application fee prescribed under a regulation; and
 - (ii) the licence renewal fee prescribed under a regulation; and
 - (iii) if the licensee is required as a condition of the licensee's licence to hold insurance, proof of the currency of the insurance; and
 - (iv) if, before or when the application is made, a criminal history costs requirement is made of the licensee—the amount of the costs required to be paid.
- (3) The application must also be accompanied by—
- (a) an audit report for all trust accounts kept by the licensee during the relevant audit period; or
 - (b) a statutory declaration by the licensee that the licensee did not operate a trust account during the relevant audit period.
- (4) In this section—
- relevant audit period*, for a licensee's licence, means the audit period ending immediately before the licence's expiry date.

59 Chief executive may renew or refuse to renew licence

- (1) The chief executive must consider the renewal application and may renew or refuse to renew the licence.
- (2) The chief executive may renew the licence only if the chief executive is satisfied—
 - (a) the licensee is a suitable person to hold a licence and—

- (i) if the licensee carries on business in partnership or in conjunction with others—each member of the partnership or each person with whom the licensee carries on business in conjunction is a suitable person to hold a licence; and
 - (ii) if the licensee is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
 - (b) the application is made under section 58; and
 - (c) the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.
- (3) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice about the decision within 14 days after making the decision.

60 Licence taken to be in force while application for renewal is considered

If an application is made under section 58, the licensee's licence is taken to continue in force from the day that it would, apart from this section, have expired until the licensee's application for renewal is—

- (a) decided under section 59; or
- (b) withdrawn by the licensee; or
- (c) taken to have been withdrawn under section 33(3) or 42(5).

Subdivision 2 Restoration

61 Application for restoration

- (1) If a person's licence expires, the person may apply for restoration of the licence.
- (2) The application must—

- (a) be made to the chief executive in the approved form; and
 - (b) be made within 3 months after the expiry; and
 - (c) state the term of the licence being applied for; and
 - (d) state the names and addresses of the person's business associates; and
 - (e) be accompanied by—
 - (i) the application fee prescribed under a regulation; and
 - (ii) the licence renewal fee prescribed under a regulation; and
 - (iii) the licence restoration fee prescribed under a regulation; and
 - (iv) if the person was required as a condition of the person's expired licence to hold insurance—proof of the currency of the insurance; and
 - (v) if, before or when the application is made, a criminal history costs requirement is made of the person—the amount of the costs required to be paid.
- (3) The application must also be accompanied by—
- (a) an audit report about all trust accounts maintained by the person during the relevant audit period; or
 - (b) a statutory declaration by the person that the person did not operate a trust account during the relevant audit period.
- (4) In this section—
- relevant audit period***, for a person's expired licence, means the audit period ending immediately before the licence expired.

62 Licence taken to be in force while application for restoration is considered

If an application is made under section 61, the person's licence is taken to have continued in force from the day that it would, apart from this section, have expired until the person's application for restoration is—

- (a) decided under section 63; or
- (b) withdrawn by the person; or
- (c) taken to have been withdrawn under section 33(3) or 42(5).

63 Chief executive may restore or refuse to restore licence

- (1) The chief executive must consider the restoration application and may decide to restore or refuse to restore the licence.
- (2) The chief executive may decide to restore the licence only if the chief executive is satisfied—
 - (a) the person is a suitable person to hold a licence and—
 - (i) if the person carries on, or intends to carry on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the person carries on business in conjunction is a suitable person to hold a licence; and
 - (ii) if the person is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
 - (b) the application is made under section 61; and
 - (c) the person meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.
- (3) If the chief executive decides to refuse to restore the licence, the chief executive must give the person an information notice about the decision within 14 days after making the decision.

- (4) If the chief executive decides to restore the licence—
- (a) the licence is taken to have been renewed on the day it would, apart from section 62, have expired (the *initial expiry date*); and
 - (b) to remove any doubt, a thing done during the period starting on the initial expiry date and ending on the day the decision is made is taken to have been as validly done as it would have been if the licence had been renewed immediately before the initial expiry date.

Division 13 Dealings with licences

Subdivision 1 Licence not to be transferred, lent or borrowed

64 Transfer of licence prohibited

A licence may not be transferred.

65 Offence to sell, lend or borrow licence

- (1) A licensee must not—
- (a) sell, lend or hire out the licensee's licence to someone else; or
 - (b) notify or advertise that the licensee's licence is available for sale, loan or hire to someone else, whether licensed or not; or
 - (c) allow someone else to hold out the person is the holder of the licensee's licence.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A person must not buy, borrow or hire a licensee's licence.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (3) If a person who is not the holder of an appropriate licence or the licensee's substitute licensee has the effective or apparent management or control of a licensee's business, the licensee is taken to have lent, and the person is taken to have borrowed, the licensee's licence.

Subdivision 2 Substitute persons

66 Appointment of substitute licensee—principal licensee—individual

- (1) A principal licensee may appoint an adult as the licensee's substitute licensee for a period of not more than 30 days only if—
- (a) the licensee will be absent from the licensee's registered office for the period; and
 - (b) the adult consents to the appointment; and
 - (c) if the licensee is required as a condition of the licensee's licence to hold insurance—the adult is covered by the insurance or holds insurance that complies with the requirements of the condition.
- (2) The principal licensee must ensure—
- (a) an appointment under subsection (1) and the substitute licensee's consent to the appointment are in writing and state the period of appointment; and
 - (b) the appointment, consent and evidence of any insurance the substitute licensee is required to have are—
 - (i) kept at the licensee's registered office; and
 - (ii) made available for immediate inspection by an inspector who asks to see them.

Maximum penalty—100 penalty units.

- (3) A principal licensee who will be absent from the licensee's registered office for a period of more than 30 days must apply to the chief executive in the approved form for the appointment or the extension of the appointment of an adult (***nominated person***) as the licensee's substitute licensee.

Maximum penalty—200 penalty units.

- (4) If the principal licensee is a person for whom an administrator has been appointed under the *Guardianship and Administration Act 2000* or is deceased, the licensee's representative may make the application under subsection (3).
- (5) The application must be accompanied by—
- (a) the nominated person's signed consent to the appointment; and
 - (b) enough information about the nominated person to enable the chief executive to decide whether the person—
 - (i) is a suitable person to hold a licence; and
 - (ii) is sufficiently qualified to perform the licensee's activities during the period; and
 - (iii) if the licensee is required as a condition of the licensee's licence to hold insurance—is covered by the insurance or holds insurance that complies with the requirements of the condition; and
 - (c) the application fee prescribed under a regulation; and
 - (d) if, before or when the application is made, a criminal history costs requirement is made of the principal licensee—the amount of the costs required to be paid.

- (6) In this section—

principal licensee means a principal licensee who is an individual.

representative, of a principal licensee, means—

- (a) for a licensee for whom an administrator has been appointed under the *Guardianship and Administration Act 2000*—the licensee’s administrator; or
- (b) for a deceased licensee—the licensee’s personal representative.

67 Appointment of substitute licensee—employed licensee or real estate salesperson in charge of a principal licensee’s business at a place

- (1) This section applies if an employed licensee or real estate salesperson in charge of a principal licensee’s business at a place (the *relevant person*) will be absent from the place for any reason, other than the relevant person’s resignation or termination of employment.
- (2) If the relevant person will be absent from the place for a period of not more than 30 days, the principal licensee may appoint an adult as—
 - (a) the employed licensee’s substitute licensee for the period if the adult consents to the appointment; or
 - (b) the real estate salesperson’s substitute real estate salesperson for the period if the adult consents to the appointment.
- (3) The principal licensee must ensure an appointment under subsection (2) and the person’s consent to the appointment are—
 - (a) in writing and state the period of appointment; and
 - (b) kept at the principal licensee’s registered office; and
 - (c) made available for immediate inspection by an inspector who asks to see them.

Maximum penalty—100 penalty units.

- (4) If the relevant person will be absent from the place for a period of more than 30 days, the principal licensee who employs the relevant person must apply to the chief executive

in the approved form for the appointment or the extension of the appointment of an adult (***nominated person***) as—

- (a) the employed licensee's substitute licensee; or
- (b) the real estate salesperson's substitute real estate salesperson.

Maximum penalty—200 penalty units.

- (5) The application must be accompanied by—
 - (a) the nominated person's signed consent to the appointment; and
 - (b) enough information about the nominated person to enable the chief executive to decide whether the person—
 - (i) either—
 - (A) if the relevant person is an employed licensee—is, under division 8, a suitable person to hold a licence; or
 - (B) if the relevant person is a real estate salesperson—is, under part 5, division 4, a suitable person for registration as a real estate salesperson; and
 - (ii) is sufficiently qualified to perform the relevant person's activities during the period; and
 - (c) the application fee prescribed under a regulation; and
 - (d) if, before or when the application is made, a criminal history costs requirement is made of the principal licensee—the amount of the costs required to be paid.
- (6) In this section—

principal licensee includes—

 - (a) for a licensee for whom an administrator has been appointed under the *Guardianship and Administration Act 2000*—the licensee's administrator; and

- (b) for a deceased licensee—the licensee’s personal representative.

68 Chief executive may appoint or refuse to appoint substitute licensee

- (1) The chief executive may decide to appoint or refuse to appoint—
 - (a) a nominated person mentioned in section 66(3) as a principal licensee’s substitute licensee; or
 - (b) a nominated person mentioned in section 67(4) as an employed licensee’s substitute licensee; or
 - (c) a nominated person mentioned in section 67(4) as a real estate salesperson’s substitute real estate salesperson.
- (2) The chief executive may decide to appoint the nominated person only if the chief executive is satisfied the nominated person—
 - (a) either—
 - (i) if the relevant person is an employed licensee—is, under division 8, a suitable person to hold a licence; or
 - (ii) if the relevant person is a real estate salesperson—is, under part 5, division 4, a suitable person for registration as a real estate salesperson; and
 - (b) is sufficiently qualified to perform the relevant person’s activities during the period of the relevant person’s absence; and
 - (c) if the principal licensee is required as a condition of the principal licensee’s licence to hold insurance—is covered by the insurance or holds insurance that complies with the requirements of the condition.
- (3) An appointment under this section may be made subject to the conditions the chief executive considers appropriate.

- (4) The chief executive must give written notice of the appointment to the principal licensee and the substitute licensee.
- (5) If the chief executive decides to refuse the application or to impose conditions on the appointment, the chief executive must give the principal licensee an information notice about the decision within 14 days after making the decision.

69 Substitute licensee

- (1) On appointment, a substitute licensee or substitute real estate salesperson—
 - (a) must act as substitute for the principal licensee, employed licensee or real estate salesperson for whom the substitute is appointed; and
 - (b) is taken to be the principal licensee, employed licensee or real estate salesperson during the period of the appointment.
- (2) A principal licensee, employed licensee or real estate salesperson for whom a substitute has been appointed must not act under the authority of—
 - (a) the principal licensee's or employed licensee's licence while the appointment continues; or
 - (b) the real estate salesperson's registration certificate while the appointment continues.

Maximum penalty—200 penalty units.

- (3) The appointment of the substitute licensee or real estate salesperson ends if—
 - (a) the period of the appointment ends; or
 - (b) the principal licensee gives written notice to end the appointment from a date stated in the notice—
 - (i) for a substitute licensee appointed under section 66(1) or 67(2)—to the substitute licensee; or

- (ii) for a substitute licensee appointed under section 68—to the chief executive and the substitute licensee; or
 - (iii) for a substitute real estate salesperson appointed under section 67(2)—to the substitute real estate salesperson; or
 - (iv) for a substitute real estate salesperson appointed under section 68—to the chief executive and the substitute real estate salesperson; or
- (c) the substitute licensee gives written notice to end the appointment from a date stated in the notice—
- (i) for a substitute licensee appointed under section 66(1) or 67(2)—to the principal licensee who made the appointment; or
 - (ii) for a substitute licensee appointed under section 68—to the chief executive and the principal licensee who applied for the appointment; or
 - (iii) for a substitute real estate salesperson appointed under section 67(2)—to the principal licensee who made the appointment; or
 - (iv) for a substitute real estate salesperson appointed under section 68—to the chief executive and the principal licensee who applied for the appointment; or
- (d) the chief executive revokes the substitute licensee’s or substitute real estate salesperson’s appointment; or
- (e) the principal licensee’s or employed licensee’s licence or the real estate salesperson’s registration certificate is suspended or cancelled; or
- (f) if the licensee is a principal licensee—the licensee stops carrying on business as a licensee.

70 Limitation on period of substitution

- (1) A principal licensee may not appoint a substitute licensee for himself or herself for more than 12 weeks in any period of 12 months.
- (2) A principal licensee may not appoint a substitute licensee for a principal licensee, employed licensee or real estate salesperson for more than 12 weeks in any period of 12 months.
- (3) The chief executive may not appoint a substitute licensee for a principal licensee, employed licensee or a substitute real estate salesperson for a real estate salesperson for more than 26 weeks in any period of 12 months.

Subdivision 3 General

71 Amendment of licence conditions

- (1) The chief executive may amend the conditions of a licence—
 - (a) on the licensee’s application; or
 - (b) on the order of QCAT after a disciplinary hearing; or
 - (c) on the chief executive’s own initiative.

Note—

QCAT may deal with the conditions of a person’s licence under section 186.

- (2) An application under subsection (1)(a) must be made in the approved form and be accompanied by the application fee prescribed under a regulation.
- (3) Before deciding to make an amendment under subsection (1)(a), the chief executive must be satisfied the licensee meets the requirements the chief executive considers the licensee must meet to be eligible for the amendment.
- (4) Before deciding to make an amendment under subsection (1)(c), the chief executive must—
 - (a) give written notice to the licensee—

- (i) of the particulars of the proposed amendment; and
 - (ii) that the licensee may make written submissions to the chief executive about the proposed amendment before a stated day, not later than 14 days after the notice is given to the licensee; and
- (b) have regard to submissions made to the chief executive by the licensee before the stated day.
- (5) Subsection (4) does not apply if the chief executive decides that the amendment must be made urgently—
 - (a) to avoid potential claims against the fund; or
 - (b) to ensure compliance with this Act or the Administration Act.
- (6) If the chief executive decides to amend the conditions of a licence under subsection (1)(c), the chief executive must give the licensee an information notice about the decision within 14 days after making the decision.
- (7) The amendment takes effect—
 - (a) on the day written notice of the amendment is given to the licensee; or
 - (b) if a later day is stated in the notice, on the stated day.
- (8) If the chief executive decides to refuse to make an amendment requested under subsection (1)(a), the chief executive must give the applicant an information notice about the decision within 14 days after making the decision.

72 Return of licence for amendment or replacement

- (1) The chief executive may require a licensee to produce the licensee's licence for amendment or replacement within a stated period of not less than 14 days if the chief executive intends to—
 - (a) amend the conditions of the licence under section 71; or
 - (b) replace the licence under section 81(5).

- (2) The licensee must comply with a requirement under subsection (1), unless the licensee has a reasonable excuse.

Maximum penalty—100 penalty units.

73 Return of licence when suspended or cancelled

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

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply if section 76(6) or 77(2) applies.

74 Surrender of licence

- (1) A licensee may surrender the licensee's licence by giving written notice to the chief executive and returning the licence.
- (2) A licence surrendered under this section stops having effect on the day it is surrendered.

75 Licence may be deactivated

- (1) A licensee may ask the chief executive to deactivate the licensee's licence.
- (2) A request under subsection (1) must be made in the approved form and be accompanied by the licensee's licence and the fee prescribed under a regulation.
- (3) The licence is taken to be deactivated when the request, the licence and the prescribed fee are received by the chief executive under subsection (2).
- (4) A licence that is deactivated does not authorise the licensee to perform an activity under the authority of the licence.
- (5) The deactivation of a licence under this section does not—
- (a) affect the term of the licence; or

- (i) held by a licensee; or
 - (ii) held by another person for a licensee; or
 - (iii) recoverable by a licensee; or
 - (e) the chief executive reasonably considers that a licensee—
 - (i) has contravened or is contravening this Act or the Administration Act; or
 - (ii) has contravened PAMDA; or
 - (iii) is likely or proposing to engage in conduct that would contravene this Act or the Administration Act.
- (2) The chief executive may, whether or not disciplinary proceedings have been started under this Act—
- (a) suspend the licensee’s licence; or
 - (b) without limiting paragraph (a), for subsection (1)(b), suspend a licence held by an employee of the licensee if the chief executive considers, on reasonable grounds, the employee is responsible in any way for the irregularity or deficiency in the licensee’s trust account.
- (3) If the chief executive suspends a licence for a reason mentioned in subsection (1)(a), (b), (d) or (e), the licence may be suspended for the period, of not more than 28 days, and on the conditions, the chief executive decides.
- (4) If the chief executive suspends the licence for the reason mentioned in subsection (1)(c), the licence is suspended until whichever of the following happens first—
- (a) the licensee files the required audit report;
 - (b) an application to QCAT for the cancellation of the licence is heard and decided.
- (5) The chief executive must give the licensee an information notice about the suspension within 14 days after suspending the licensee’s licence.

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- (6) The licensee must return the licence to the chief executive within 14 days after the licensee receives the notice, unless the person has a reasonable excuse.

Maximum penalty for subsection (6)—100 penalty units.

77 Immediate cancellation

- (1) A licensee's licence is cancelled on the happening of any of the following events—
- (a) the licensee is convicted of a serious offence;
 - (b) if the licensee is an individual, the licensee is an insolvent under administration;
 - (c) if the licensee is a corporation, the licensee has been wound up or deregistered under the Corporations Act.
- (2) The licensee must return the licence to the chief executive within 14 days after the happening of an event mentioned in subsection (1), unless the licensee has a reasonable excuse.

Maximum penalty for subsection (2)—100 penalty units.

Division 15 General provisions about licences

78 Form of licence

- (1) A licence must be in the approved form.
- (2) However, the chief executive may approve—
- (a) a form of licence for office display purposes; and
Example—
a licence in the form of a certificate that may be framed and displayed in an office
 - (b) a form of licence for personal identification purposes.
- (3) The chief executive may also issue a form of licence for a corporation endorsed with the categories of licence issued in the corporation's name.

- (4) The licence must contain the following particulars—
 - (a) the name of the licensee;
 - (b) the date of issue of the licence;
 - (c) the expiry date of the licence;
 - (d) other particulars prescribed under a regulation.

79 Requirement to keep copy of licence available for inspection

- (1) A licensee that is a corporation must keep a copy of the licensee's licence available for inspection at each place of business of the licensee.

Maximum penalty—100 penalty units.

- (2) A principal licensee must keep a copy of the principal licensee's licence available for inspection at each place of business of the principal licensee.

Maximum penalty—100 penalty units.

- (3) A licensee employed by a principal licensee must keep a copy of the licensee's licence available for inspection at each place of business where the licensee is employed as an employed licensee.

Maximum penalty—100 penalty units.

80 Term of licence

- (1) A licence may be issued for a 1-year or 3-year term.
- (2) However, a regulation may prescribe the circumstances under which a licence may be issued or renewed for a shorter term.

Example—

A licence may be issued for a shorter term to ensure multiple licences held by the same person expire on the same day.

81 Replacement licences

- (1) A licensee may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged licence.
- (2) The application must be made in the approved form.
- (3) The chief executive must grant the application if the chief executive is satisfied the licence has been lost, stolen, destroyed or damaged in a way to require its replacement.
- (4) If the chief executive grants the application, the chief executive must issue another licence to the applicant to replace the lost, stolen, destroyed or damaged licence.
- (5) The chief executive may also replace a licence if—
 - (a) either—
 - (i) the licensee has given written notice to the chief executive of a prescribed change under section 83;
or
 - (ii) the chief executive reasonably believes a prescribed change for the licensee has happened;
and
 - (b) the chief executive is satisfied the prescribed change requires a replacement of the licence.
- (6) If the chief executive replaces a licence under this section—
 - (a) the licence continues to be subject to the same conditions and term to which the licence was subject before being replaced; and
 - (b) the holder of the licence must pay the chief executive the fee prescribed under a regulation.

82 Register of licences

- (1) The chief executive must keep a register of licences and applications for licences (*licence register*).
- (2) The licence register must contain the following particulars—
 - (a) for each applicant for a licence—

- (i) the applicant's name; and
 - (ii) if the applicant intends to carry on business under the licence, the place where the applicant intends to carry on business; and
 - (iii) the category of licence applied for; and
 - (iv) the date of the application; and
 - (v) the application number;
- (b) for each licensee—
- (i) the licensee's name; and
 - (ii) the licensee's registered office; and
 - (iii) the category of the licensee's licence; and
 - (iv) the dates of issue and expiry of the licensee's current licence; and
 - (v) any conditions imposed on the licence; and
 - (vi) if the licensee is a corporation, the name of the individual in charge of the licensee's business at the licensee's registered office; and
 - (vii) if the licensee is a director of a licensed corporation, the name of the licensed corporation; and
 - (viii) if the licensee is an employee of another licensee, the name of the licensee's employer; and
 - (ix) the licensee's licence number; and
 - (x) particulars of any surrender, suspension or cancellation of the licensee's licence.
- (3) A person may, on payment of the fee prescribed under a regulation, inspect, or get a copy of details in, the part of the register containing the particulars mentioned in subsection (2)—
- (a) at a place or places decided by the chief executive; or
 - (b) by using a computer.

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- (4) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.
 - (5) The register may be kept in any way the chief executive considers appropriate.
 - (6) In this section—
contain includes record and store.

83 Licensees to notify chief executive of changes in circumstances

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

Part 3 Property agents and resident letting agents generally

Division 1 Conduct provisions

Subdivision 1 Carrying on business

84 Who must be in charge of a property agent's business at a place

- (1) A property agent who is an individual and a principal licensee must—

[s 84]

- (a) be in charge of the agent's business at the agent's registered office; and
- (b) if the property agent has more than 1 place of business—ensure the following at each other place of business—
 - (i) for a place of business that is a resident letting agency—a real estate agent, or resident letting agent, who is an individual is in charge of the agent's business at the place of business; or
 - (ii) for a place of business that is not a resident letting agency—
 - (A) if the agent is an auctioneer—an auctioneer who is an individual is in charge of the auctioneer's business at the place of business; or
 - (B) if the agent is a real estate agent—a real estate agent who is an individual, or a real estate salesperson whose registration certificate is not subject to conditions, is in charge of the agent's real estate agency business at the place of business.

Maximum penalty—200 penalty units.

- (2) A property agent that is a corporation and a principal licensee (a *corporate agent*) must—
 - (a) ensure—
 - (i) if the corporate agent is an auctioneer—the individual in charge of the corporate agent's auctioneer business at its registered office is an auctioneer; or
 - (ii) if the corporate agent is a real estate agent—the individual in charge of the corporate agent's real estate agency business at its registered office is a real estate agent; and

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- (b) if the corporate agent has more than 1 place of business—ensure the following at each other place of business—
- (i) that is a resident letting agency—a real estate agent, or resident letting agent, who is an individual is in charge of the corporate agent’s business at the place of business;
 - (ii) that is not a resident letting agency—
 - (A) if the corporate agent is an auctioneer—an auctioneer who is an individual is in charge of the corporate agent’s auctioneer business at the place of business; or
 - (B) if the corporate agent is a real estate agent—a real estate agent who is an individual, or a real estate salesperson whose registration certificate is not subject to any conditions, is in charge of the corporate agent’s real estate agency business at the place of business.

Maximum penalty—

- (a) for an individual guilty under the Criminal Code, chapter 2 of an offence—200 penalty units; or
 - (b) for a corporation—1,000 penalty units.
- (3) An individual must not be in charge of a property agent’s business at more than 1 place.

Maximum penalty—200 penalty units.

- (4) It is not an offence against subsection (1) or (2) for a property agent who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.
- (5) For subsection (4), land is *contiguous* with other land only if the parcels of land have a common boundary that is not separated by a public road.

(6) In this section—

resident letting agency means a place of business at which the only business carried on is the business of a resident letting agent.

85 Who must be in charge of a resident letting agent's business at a place

(1) A resident letting agent who is an individual and a principal licensee must be in charge of the agent's business at the agent's registered office.

Maximum penalty—200 penalty units.

(2) A resident letting agent that is a corporation must ensure the individual in charge of the agent's business at the agent's registered office is a resident letting agent or real estate agent.

Maximum penalty—

- (a) for an individual guilty under the Criminal Code, chapter 2 of an offence—200 penalty units; or
- (b) for a corporation—1,000 penalty units.

(3) If a resident letting agent who is an individual and a principal licensee has more than 1 place of business, the resident letting agent must ensure another individual who is a resident letting agent or real estate agent is in charge of the agent's business at each place of business.

Maximum penalty—200 penalty units.

(4) If a resident letting agent that is a corporation has more than 1 place of business, the resident letting agent must ensure an individual who is a resident letting agent or real estate agent is in charge of the agent's business at each place of business.

Maximum penalty—

- (a) for an individual guilty under the Criminal Code, chapter 2 of an offence—200 penalty units; or
- (b) for a corporation—1,000 penalty units.

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- (5) An individual must not be in charge of a resident letting agent's business at more than 1 place of business.

Maximum penalty—200 penalty units.

- (6) It is not an offence against subsection (5) for an individual who is a resident letting agent or real estate agent to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.
- (7) For subsection (6), land is *contiguous* with other land only if the parcels of land have a common boundary that is not separated by a public road.

86 Resident letting agent's registered office to be in particular building complex

- (1) If a resident letting agent has body corporate approval to manage 1 building complex, the agent must ensure the agent's registered office is in the building complex.

Maximum penalty—200 penalty units.

- (2) If a resident letting agent has body corporate approval to manage at least 2 building complexes, the agent must ensure the agent's registered office is in 1 of the building complexes.

Maximum penalty—200 penalty units.

87 Responsibility for acts and omissions of salespersons

- (1) A real estate agent who is a principal licensee must take reasonable steps to ensure each real estate salesperson employed by the agent is properly supervised and complies with this Act.
- (2) A real estate agent who is an employed licensee in charge of a licensee's business at a place of business must take reasonable steps to ensure each real estate salesperson employed at the place is properly supervised and complies with this Act.
- (3) A real estate agent who fails to comply with subsection (1) or (2) is liable to disciplinary action under part 9.

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

88 Commission may be claimed only for actual amounts

- (1) This section applies to—
 - (a) a property agent who performs, for the payment of a commission, a service of selling or letting property or collecting rents; or
 - (b) a resident letting agent who performs, for the payment of a commission, a service of letting lots or collecting rents.
- (2) The property agent or resident letting agent must not claim commission worked out on an amount more than the actual sale price of the property, the actual rental for the property being let or the actual amount of rent collected.

Maximum penalty—200 penalty units.

89 Restriction on recovery of reward or expense—no proper authorisation etc.

- (1) A person is not entitled to sue for, recover or keep a reward or expense for the performance of an activity as a property agent or resident letting agent unless, at the time the activity was performed, the person—
 - (a) either—
 - (i) if the person performed an activity as a property agent—held a property agent licence; or
 - (ii) if the person performed an activity as a resident letting agent—held a resident letting agent licence; and
 - (b) was authorised under the person’s licence to perform the activity; and

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- (c) was properly appointed under part 4 by the person to be charged with the reward or expense.
- (2) A person who sues for, recovers or keeps a reward or expense for the performance of an activity as a property agent or resident letting agent other than as provided by subsection (1) commits an offence.

Maximum penalty for subsection (2)—200 penalty units.

90 Restriction on recovery of reward or expense above amount allowed

- (1) A person is not entitled to sue for, recover or keep a reward for the performance of an activity as a property agent or resident letting agent that is more than the amount of the reward stated in the appointment given to the person under section 102.
- (2) A person is not entitled to sue for, recover or keep expenses for the performance of an activity as a property agent or resident letting agent that are more than the amount of the expenses stated in the appointment given to the person under section 102 and actually expended.
- (3) A person who sues for, or recovers or keeps a reward or expense for the performance of an activity as a property agent or resident letting agent, other than as provided by this section, commits an offence.

Maximum penalty—200 penalty units.

- (4) In this section—

actually expended, for expenses, means the amount actually expended after deducting—

- (a) the amount of any benefit, received or receivable, directly or indirectly, in connection with the expenses by the person seeking to sue for, recover or retain the expenses; or
- (b) if the benefit has no fixed amount—the market value of the benefit.

91 Excess commission etc. to be repaid

- (1) This section applies if—
 - (a) a person is convicted of an offence against section 88(2), 89(2) or 90(3); and
 - (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an activity an amount to which the person was not entitled.
- (2) The court must order the person to pay the amount to the client.
- (3) The order must be made whether or not any penalty is imposed on the conviction.
- (4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of the court.

Subdivision 3 Auction of goods

92 Buyer's premium

- (1) This section applies to an auction of goods by an auctioneer.
- (2) An auctioneer must not charge the buyer of the goods a buyer's premium unless—
 - (a) the auctioneer—
 - (i) before the auction, obtains the written consent of the owner of the goods; and
 - (ii) discloses, in the way prescribed under a regulation, that a buyer's premium is payable on the purchase of the goods; and
 - (b) the premium is not more than the amount prescribed or worked out under a regulation.

Maximum penalty—200 penalty units.

(3) The auctioneer does not act for the buyer of the goods only because the agent accepts a buyer's premium from the buyer.

(4) In this section—

buyer's premium means an amount payable to an auctioneer by a buyer on the purchase of goods.

owner, of goods, includes a person who is lawfully entitled to sell the goods.

Division 2 General

93 Registered office

A property agent's or resident letting agent's *registered office* is—

- (a) for a property agent or resident letting agent who is a principal licensee—
 - (i) the place the agent states in the agent's application for a property agent licence or resident letting agent licence as the agent's principal place of business; or
 - (ii) another place notified to the chief executive by the agent in the approved form as the agent's principal place of business; and
- (b) for a property agent or resident letting agent who is an employed licensee—
 - (i) the place the agent states in the licensee's application for a property agent licence or resident letting agent licence as the agent's business address; or
 - (ii) another place notified to the chief executive by the agent in the approved form as the agent's business address.

94 Property agent or resident letting agent to notify chief executive of change in place of business etc.

- (1) A property agent, or resident letting agent, who is a principal licensee must notify the chief executive in the approved form of—
- (a) any change in the agent’s principal place of business within 14 days after the change; and
 - (b) the closure of any place where the agent carries on business within 14 days after the closure; and
 - (c) the opening of any place where the agent carries on business within 14 days after the opening.

Maximum penalty—200 penalty units.

- (2) A property agent, or resident letting agent, who is an employed licensee must notify the chief executive in the approved form of any change in the agent’s business address within 14 days after the change.

Maximum penalty—200 penalty units.

95 Display and publication of licensee’s name

- (1) A property agent, or resident letting agent, who is a principal licensee must not publish, or permit to be published, in a newspaper or elsewhere an advertisement for the agent’s business without stating in the advertisement the particulars prescribed under a regulation.

Maximum penalty—100 penalty units.

- (2) A property agent who conducts an auction must display at the auction, in the way and for the period prescribed under a regulation—
- (a) the property agent’s name; and
 - (b) any other particulars prescribed under a regulation.

Maximum penalty—100 penalty units.

96 Access to particular documents by new resident letting agent

- (1) This section applies if a resident letting agent (*existing letting agent*)—
 - (a) is a letting agent for a community titles scheme; and
 - (b) enters into a contract to sell management rights for the community titles scheme to another resident letting agent (*new letting agent*).
- (2) At least 14 days before the day management rights are to pass to the buyer under the contract, the existing letting agent must make available to the new letting agent the existing letting agent's trust account records for the community titles scheme to which the management rights relate for the prescribed period before the intended date of the sale of the management rights.
- (3) If the existing letting agent fails to comply with subsection (2), the new letting agent may avoid the contract.
- (4) In this section—

prescribed period means—

 - (a) 5 years; or
 - (b) if the existing resident letting agent has been the letting agent for the community titles scheme for a shorter period, the shorter period.

Division 3 Offences

97 Acting as property agent

- (1) A person must not, as an agent for someone else for reward, perform an activity that may be done under the authority of a property agent licence unless the person—
 - (a) holds a property agent licence and the performance of the activity is authorised under the person's licence; or

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(b) is otherwise permitted under this or another Act to perform the activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A person must not act as a property agent unless—

(a) the person holds a property agent licence and the act is done under the authority of the person's licence; or

(b) the act is otherwise permitted under this or another Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) Without limiting the ways a person may act as a property agent, a person acts as a property agent if the person—

(a) performs an activity mentioned in section 25(1) or (2) or 26(1); or

(b) advertises, notifies or states that the person—

(i) performs an activity mentioned in section 25(1) or (2) or 26(1); or

(ii) is willing to perform an activity mentioned in section 25(1) or (2) or 26(1); or

(c) in any way holds out as being ready to perform an activity mentioned in section 25(1) or (2) or 26(1).

(4) However—

(a) a person does not act as a property agent only because the person, while performing duties as an employee of a property agent at the property agent's registered office or other place of business—

(i) collects, and issues receipts for, rents; or

(ii) gives a person a list, prepared by or for the property agent, of premises available for rent; or

(iii) does something of an administrative nature relating to a thing the property agent does as a property agent; and

- (b) a person does not act as a real estate agent only because the person collects rents for the provider of rooming accommodation, as an employee of the provider, if the rents are collected in the course of providing rooming accommodation; and
- (c) a lawyer does not act as a real estate agent only because the lawyer collects rents in the lawyer's practice if the lawyer complies with the requirements of the *Legal Profession Act 2007* for the rents; and
- (d) a person does not act as a real estate agent only because the person sells, or negotiates the sale of, a manufactured home under an authority given to the person under the *Manufactured Homes (Residential Parks) Act 2003*, section 60.

98 Employment of persons in real estate business

- (1) A real estate agent must not employ, as a real estate salesperson, a person the agent knows, or ought to know, does not hold a registration certificate.

Maximum penalty—200 penalty units.

- (2) A real estate agent must not directly engage an independent contractor as a real estate salesperson unless the independent contractor holds a property agent licence.

Maximum penalty—200 penalty units.

- (3) A principal licensee who is an individual and carries on the business of a real estate agent must not employ, as a real estate salesperson for the business, himself or herself or another individual with whom the principal licensee carries on business as a real estate agent.

Maximum penalty—200 penalty units.

- (4) A principal licensee that is a corporation and carries on business as a real estate agent must not employ an executive officer of the corporation as a real estate salesperson for the business.

Maximum penalty—

- (a) for an individual guilty under the Criminal Code, chapter 2 of an offence—200 penalty units; or
- (b) for a corporation—1,000 penalty units.

99 Property agent and resident letting agent must not act for more than 1 party

- (1) A property agent or resident letting agent must not act for more than 1 party to a transaction.

Maximum penalty—200 penalty units.

- (2) If a property agent or resident letting agent acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made.
- (3) If the transaction is an exchange of property, a property agent does not contravene subsection (1), and subsection (2) does not apply to the extent that the agent acts for each of the parties to the transaction.

100 Acting as resident letting agent

- (1) A person must not act as a resident letting agent unless—
 - (a) the person holds a resident letting agent licence and the act is done under the authority of the person’s licence; or
 - (b) the act is otherwise permitted under this or another Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A lawyer does not act as a resident letting agent only because the lawyer collects rents in the lawyer’s practice for lots in a building complex if the lawyer complies with the requirements of the *Legal Profession Act 2007* for the rents.
- (3) A person does not act as a resident letting agent only because the person collects rents for the provider of rooming accommodation, as an employee of the provider, if the rents

are collected in the course of providing rooming accommodation.

101 Production of licence

- (1) An auctioneer must, if asked by a person with whom the auctioneer is dealing, produce the auctioneer's auctioneer licence for inspection by the person.

Maximum penalty—100 penalty units.

- (2) A real estate agent must, if asked by a person with whom the agent is dealing, produce the agent's real estate agent licence for inspection by the person.

Maximum penalty—100 penalty units.

- (3) A resident letting agent must, if asked by a person with whom the agent is dealing, produce the agent's resident letting agent licence for inspection by the person.

Maximum penalty—100 penalty units.

Part 4 Appointment of property agent or resident letting agent

Division 1 Requirement to appoint property agent or resident letting agent

102 Appointment

- (1) A property agent must not act as a property agent for a person (a *client*) to perform an activity (a *service*) for the client unless—
- (a) the client first appoints the property agent under subsection (2); or

- (b) an appointment that is in force is assigned to the property agent under the terms of that appointment or under section 113.

Maximum penalty—200 penalty units.

- (2) The appointment of a property agent must—
- (a) comply with division 2 and section 109(1); and
- (b) include any other information prescribed under a regulation, in the way (if any) prescribed under a regulation.

Example of a way for paragraph (b)—

- as an addition to the approved form under section 104
- the expression of commission for a service in a dollar amount, or as a percentage, or both

- (3) A resident letting agent must not act as a resident letting agent for a person (also a **client**) to perform an activity (also a **service**) for the client unless—
- (a) the client first appoints the resident letting agent under subsection (4); or
- (b) an appointment that is in force is assigned to the resident letting agent under the terms of that appointment or under section 113.

Maximum penalty—200 penalty units.

- (4) The appointment of a resident letting agent must—
- (a) comply with division 2, subdivision 1 and section 109(1); and
- (b) include any other information prescribed under a regulation, in the way (if any) prescribed under a regulation.
- (5) An appointment under subsection (1) or (3) may be for the performance of—
- (a) a particular service or services (a **single appointment**);
or

- (b) a particular service or services over a period (a *continuing appointment*).
- (6) Subsections (1), (2) and (5) do not apply to a sale of property by a real estate agent who acts in conjunction with a real estate agent appointed for this section to sell the property.

103 Particular requirements for appointing property agent for sole or exclusive agency

- (1) This section applies to an appointment of a property agent for a sole or exclusive agency.
- (2) Before the appointment is signed, the property agent must—
 - (a) give the client a notice, in the approved form, that provides information about sole and exclusive agency appointments; and
 - (b) discuss with the client—
 - (i) whether the appointment is to be for a sole agency or an exclusive agency; and
 - (ii) the proposed term of the appointment; and
 - (iii) for an appointment for the sale of residential property other than a commercial scale appointment, the client's entitlement to negotiate the term of the appointment up to a maximum term of 90 days; and
 - (iv) the consequences for the client if the property is sold by someone other than the agent during the term of the appointment.

Note—

The commission of an offence against this subsection also renders an appointment for the sale of a place of residence or land or an interest in a place of residence or land ineffective under section 112(3).

Maximum penalty—200 penalty units.

Division 2 Content of appointment

Subdivision 1 Property agents and resident letting agents

104 General content of appointment

- (1) An appointment of a property agent or resident letting agent must include the following in the approved form—
 - (a) a prominent statement that the client should seek independent legal advice before signing the appointment;
 - (b) a statement about whether it is a single appointment or a continuing appointment;
 - (c) for each service, provision for the inclusion of a statement about the following—
 - (i) the service to be performed by the property agent or resident letting agent;
 - (ii) the fees, charges and any commission payable for the service;
 - (iii) when the fees, charges and any commission for the service become payable;
 - (iv) the expenses, including advertising and marketing expenses, the agent is authorised to incur in connection with the performance of each service or category of service;
 - (v) the source and the estimated amount or value of any rebate, discount, commission or benefit that the agent may receive for any expenses that the agent may incur in connection with the performance of the service;
 - (vi) any condition, limitation or restriction on the performance of the service.
- (2) In this section—

continuing appointment see section 102(5)(b).

single appointment see section 102(5)(a).

105 Other requirements—commission

- (1) This section applies to an appointment of a property agent or resident letting agent for a service that is the sale or letting of property or the collecting of rents if commission is payable for the service and is expressed as a percentage of an estimated sale price or amount of rent to be paid or collected.
- (2) The appointment must state, in writing, that the commission for the service is worked out only on—
 - (a) for the sale of property—the actual sale price; or
 - (b) for the letting of property—the actual rental for the property; or
 - (c) for the collecting of rents—the actual amount of rent collected.

106 Other requirements—statement that appointment may be revoked by notice

- (1) This section applies to an appointment of—
 - (a) a property agent, other than an appointment for an open listing or a sole or exclusive agency; or
 - (b) a resident letting agent.
- (2) The appointment must state, in writing, that the appointment may be revoked by either party giving the other party at least 30 days written notice of the revocation, unless the parties agree, in writing, to an earlier day for the appointment to end.

Subdivision 2 Property agents

107 Other requirements—auction

- (1) This section applies to an appointment of a property agent that is in relation to an auction.
- (2) The appointment must state, in writing, the day set for the auction.

108 Other requirements—sole or exclusive agency

- (1) This section applies to an appointment of a real estate agent for a sole or exclusive agency.
- (2) The appointment must state in writing—
 - (a) whether the appointment is for a sole or exclusive agency; and
 - (b) the day the appointment ends.
- (3) The appointment may provide that at the end of the term of the sole or exclusive agency, it continues under the terms of an open listing that may be ended at any time by the client or agent.

Division 3 Other provisions

109 Giving signed appointment to client

- (1) An appointment of a property agent or resident letting agent under section 102(1) or (3) must be signed and dated by—
 - (a) the client; and
 - (b) the property agent or resident letting agent or someone authorised or apparently authorised to sign for the property agent or resident letting agent.
- (2) The property agent or resident letting agent must give a copy of the signed appointment to the client.

Maximum penalty for subsection (2)—200 penalty units.

110 Limitation on term of reappointment of property agent for sale of residential property

- (1) A property agent may be reappointed for a sole or exclusive agency for the sale of residential property for 1 or more terms of not more than 90 days.
- (2) The limitation on the term of reappointment under subsection (1) does not apply if the reappointment is a commercial scale appointment.
- (3) A property agent appointed for the sale of residential property under a sole or exclusive agency commits an offence if the agent is reappointed for the sale earlier than 14 days before the term of the sole or exclusive agency ends.

Note—

The commission of an offence against this subsection relating to the reappointment also renders the reappointment ineffective under section 112(4).

Maximum penalty for subsection (3)—200 penalty units.

111 Form of reappointment

- (1) The reappointment of a property agent under section 110 must—
 - (a) be in the approved form; and
 - (b) include any other information required under a regulation.
- (2) A reappointment that does not comply with subsection (1) is ineffective from the time it is made.

112 Other ineffective appointments and reappointments

- (1) The appointment of a property agent for the sale of residential property under a sole or exclusive agency is ineffective from

the time it is made if the term of the appointment is more than 90 days.

- (2) Subsection (1) does not apply to a commercial scale appointment.
- (3) The appointment of a property agent for a sole or exclusive agency for the sale of a place of residence or land or an interest in a place of residence or land is ineffective from the time it is made if the property agent commits an offence against section 103.
- (4) The appointment of a property agent or resident letting agent is ineffective from the time it is made if the appointment does not comply with section 104.
- (5) The reappointment of a property agent for a further term of sole or exclusive agency for the sale of residential property is ineffective from the time it is made if the property agent commits an offence against section 110(3) relating to the reappointment.

113 Assignment of appointment

- (1) This section applies if—
 - (a) a property agent who holds an appointment, under section 102, from a client to perform a service or services for the client assigns the appointment to another property agent (*assignee*); or
 - (b) a resident letting agent who holds appointments, under section 102, from clients to perform a service or services for the clients for a building complex assigns the appointments to another person who becomes the resident letting agent for the complex (also an *assignee*).
- (2) The assignee must give each client written notice of the assignment within 14 days after the assignment.

Maximum penalty—100 penalty units.

- (3) The notice must state the following—
 - (a) the assignee's name and contact details;

- (b) the address of the assignee's registered office;
 - (c) the appointment has been assigned without changing the terms of the appointment;
 - (d) the appointment may be revoked by the client by giving at least 30 days written notice of the revocation to the assignee, unless the client and the assignee agree, in writing, to an earlier day for the appointment to end.
- (4) The appointment is taken, for section 102, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.
- (5) To remove any doubt, it is declared that the assignment of an appointment under this section does not authorise the assignee to vary the terms of the appointment without the client's agreement.

114 Revocation of appointment

- (1) An appointment of a property agent, other than an appointment for an open listing or a sole or exclusive agency that has not been assigned, or resident letting agent may be revoked by either party giving the other party at least 30 days written notice of the revocation, unless the parties agree, in writing, to an earlier day for the appointment to end.

Note—

For when an appointment of a property agent for the sale of residential property under an open listing may be revoked, see section 20(c).

- (2) Despite any agreement to the contrary by the parties to an appointment of a property agent or resident letting agent, a party is only required to give the other party to the appointment at least 30 days written notice of the revocation, unless both parties agree, in writing, to an earlier day for the appointment to end.
- (3) A provision of an agreement is void if it requires a party to an appointment of a property agent or resident letting agent to give a notice of revocation of the appointment to the other

party to the appointment other than in accordance with subsection (2).

- (4) Subsections (5) and (6) apply to an appointment, that has not been assigned, of a property agent for a sole or exclusive agency for the sale of residential property for a term of at least 60 days, other than a commercial scale appointment.
- (5) The appointment may be revoked by either party giving at least 30 days written notice of the revocation, unless both parties agree in writing to an earlier day for the appointment to end.
- (6) However, the appointment must be for at least 60 days, unless both parties agree, in writing, to an earlier day for the appointment to end.
- (7) The revocation of an appointment of a property agent or resident letting agent does not affect existing contracts entered into by the property agent or resident letting agent on behalf of the client.

Part 5 Registration of real estate salespersons

Division 1 Real estate salesperson's authorisation

115 What a registration certificate authorises

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

Division 2 How to obtain registration

116 Steps involved in obtaining registration

- (1) A person who wishes to obtain registration as a real estate salesperson must be a suitable person for registration under division 4.
- (2) The person must apply for registration by—
 - (a) giving the chief executive an application showing, among other things, the person is eligible to obtain registration; and
 - (b) paying the prescribed fees.
- (3) In deciding the person's application, the chief executive must have regard, among other things, to—
 - (a) the person's suitability for registration as a real estate salesperson; and
 - (b) the person's eligibility to hold the registration certificate.

Division 3 Applications for registration

117 Application for registration

- (1) An applicant for registration must—
 - (a) be an individual; and
 - (b) apply to the chief executive in the approved form; and
 - (c) state the term of the registration being applied for; and
 - (d) establish the applicant's suitability and eligibility for registration as a real estate salesperson; and
 - (e) provide any information the chief executive reasonably requires to decide whether the applicant is suitable and eligible to be a real estate salesperson.
- (2) The application must be accompanied by—

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- (a) the application fee prescribed under a regulation; and
- (b) the registration issue fee prescribed under a regulation; and
- (c) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid.

118 Particular persons can not make application

- (1) An individual who is a disqualified person can not make an application for a registration certificate during the period for which the individual is disqualified.
- (2) An individual who made an application for a registration certificate the chief executive decides to refuse can not make another application for a registration certificate—
 - (a) for 3 months after the day the chief executive gives the person an information notice for the decision; or
 - (b) if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed—for 3 months after the day the decision is confirmed.
- (3) In this section—

disqualified person means a person who, as a consequence of an order made by QCAT under section 186 or 188 or a court under section 227 or 228, is disqualified from holding a registration certificate.

119 Requirement to give information or material about application or request

- (1) This section applies to an applicant for—
 - (a) a registration certificate; or
 - (b) renewal of a registration certificate; or
 - (c) restoration of a registration certificate.

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- (2) The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to decide the application.

Example of that information or material—

information or material the chief executive reasonably considers is needed to establish the applicant's suitability for the registration certificate

- (3) The applicant is taken to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive's requirement.

Division 4 Suitability of applicants

120 Suitability of applicants

- (1) A person is not a suitable person for registration as a real estate salesperson if the person is—
- (a) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
 - (b) currently disqualified from holding a licence or registration certificate; or
 - (c) a person the chief executive decides under section 121 is not a suitable person to obtain registration as a real estate salesperson.
- (2) An individual who is not a suitable person for registration as a real estate salesperson can not obtain registration as a real estate salesperson.

121 Chief executive must consider suitability of applicants

- (1) The chief executive must, when deciding whether a person is a suitable person for registration as a real estate salesperson, consider the following things—

- (a) the person's character;
- (b) whether the person held a licence or registration under a relevant Act that was suspended or cancelled under the relevant Act;
- (c) whether an amount has been paid from the fund because the person did, or omitted to do, something that gave rise to the claim against the fund;
- (d) whether the person has been disqualified under a relevant Act from being—
 - (i) the holder of a licence within the meaning of the relevant Act; or
 - (ii) the holder of a registration certificate within the meaning of the relevant Act;
- (e) whether the person has been disqualified from managing corporations under the Corporations Act;
- (f) whether, within the previous 5 years, QCAT, the former tribunal or the District Court has made an order under this Act or PAMDA adverse to the person;
- (g) the person's criminal history;
- (h) if the person is an insolvent under administration—
 - (i) the circumstances giving rise to the person being an insolvent under administration; and
 - (ii) whether the person took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the person being an insolvent under administration; and
 - (iii) whether the person is in a position to influence significantly the management of a licensee's business;
- (i) whether the person has been convicted of an offence against a relevant Act or the Administration Act;
- (j) whether the person is capable of satisfactorily performing the activities of a real estate salesperson;

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- (k) whether the person's name appears in the register of persons disqualified from managing corporations under the Corporations Act;

Note—

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

- (l) another thing the chief executive may consider under this Act.
- (2) If the chief executive decides a person is not a suitable person for registration as a real estate salesperson, the chief executive must give the person an information notice about the decision within 14 days after the decision is made.

- (3) In this section—

fund includes the claim fund under PAMDA.

relevant Act means this Act, an Agents Act, PAMDA or a corresponding law.

122 Investigations about suitability of applicants and real estate salespersons

- (1) The chief executive may make investigations about either of the following persons to help the chief executive decide whether the person is a suitable person to hold registration as a real estate salesperson—
- (a) an applicant for registration as a real estate salesperson;
- (b) a real estate salesperson.
- (2) Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a report about the person's criminal history.
- (3) The commissioner must give the report to the chief executive.
- (4) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.

- (5) If the person's criminal history includes a conviction recorded against the person, the commissioner's report must be written.

123 Notice of change in criminal history

- (1) This section applies if the commissioner of the police service reasonably suspects the criminal history of the holder of a registration certificate has changed.
- (2) The commissioner may notify the chief executive the person's criminal history has changed.
- (3) The notice must state the following—
 - (a) the person's name and any other name the commissioner believes the person may use or may have used;
 - (b) the person's date and place of birth;
 - (c) a brief description of the nature of the offence giving rise to the conviction or charge to which the change relates.
- (4) The chief executive may confirm the commissioner's suspicions under subsection (1).
- (5) For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.
- (6) In this section—

criminal history, in relation to a person, includes a charge of an offence laid against the person that has not been dismissed.

offence includes alleged offence.

124 Costs of criminal history report

- (1) The chief executive may require an applicant for registration as a real estate salesperson or a real estate salesperson to pay the reasonable, but no more than actual, costs of obtaining a report under section 122 about the applicant or salesperson.
- (2) The requirement is a *criminal history costs requirement*.

-
- (3) The chief executive may notify the applicant or salesperson of the requirement to pay a criminal history costs requirement—
 - (a) in the approved form; or
 - (b) on the department’s website; or
 - (c) in a written notice given by the chief executive to the applicant or salesperson.
 - (4) If the criminal history costs requirement is made in a written notice given by the chief executive to the applicant or salesperson, the notice must include a requirement for the costs to be paid within a stated reasonable period.
 - (5) The applicant or salesperson is taken to have withdrawn the application if, within the stated reasonable period, the applicant or salesperson fails to comply with the chief executive’s requirement to pay the criminal history costs requirement.
 - (6) The chief executive must refund to the applicant or salesperson an amount paid under the requirement if—
 - (a) the chief executive refuses the application without asking for the report; or
 - (b) the applicant withdraws the application before the chief executive asks for the report.
 - (7) In this section—

applicant includes proposed applicant.

125 Use of information obtained under s 122 or 123

- (1) Subsection (2) applies to the chief executive in considering information about a person obtained under section 122 or 123.
- (2) Information about a conviction of the person may be used only for making a decision as to whether the person is, or continues to be, a suitable person to hold registration as a real estate salesperson.
- (3) Subsection (4) applies to the chief executive in considering information about a person obtained under section 123.

- (4) Information about a charge against the person may not be relied on as a basis for making a decision as to whether the person is, or continues to be, a suitable person to hold registration as a real estate salesperson.

126 Confidentiality of criminal history

- (1) A public service employee performing functions under this Act must not, directly or indirectly, disclose to anyone else—
 - (a) a report about a person’s criminal history, or information contained in the report, given under section 122; or
 - (b) any of the contents of a notice given under section 123(2).

Maximum penalty—100 penalty units.

- (2) However, the person does not contravene subsection (1) if—
 - (a) disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under or relating to this Act; or
 - (b) the disclosure is otherwise required or permitted by law.
- (3) The chief executive must destroy the following as soon as practicable after considering a person’s suitability to hold registration as a real estate salesperson—
 - (a) a written report about the person’s criminal history;
 - (b) a notice given under section 123(2) about the person.

Division 5 Eligibility for registration

127 Eligibility for registration as real estate salesperson

- (1) An individual is eligible for registration as a real estate salesperson only if the individual—
 - (a) is at least 18 years; and

-
- (b) has the educational or other qualifications for registration approved by the chief executive.

Note—

The qualifications are stated on the department's website.

- (2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—
 - (a) has a comparable qualification to the qualification mentioned in subsection (1)(b); or
 - (b) within 2 years before the day the individual's application for registration was received by the chief executive—
 - (i) has held a registration certificate or licence under this Act; or
 - (ii) has held a comparable certificate or licence under PAMDA.

Division 6 Issue of registration certificate

128 Chief executive may issue or refuse to issue registration certificate

- (1) The chief executive may decide to issue or refuse to issue a registration certificate to an applicant.
- (2) The chief executive may decide to issue a registration certificate to an applicant only if the chief executive is satisfied—
 - (a) the applicant is a suitable person to obtain registration; and
 - (b) the applicant is eligible to obtain registration; and
 - (c) the application is made under section 117.
- (3) If the chief executive decides to refuse to issue the registration certificate, the chief executive must give the applicant an

information notice about the decision within 14 days after making the decision.

- (4) If the chief executive decides to refuse the applicant's application for a registration certificate, the applicant may not make another application for a registration certificate—
 - (a) for 3 months after the day the chief executive gives the applicant the information notice under subsection (3); or
 - (b) if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed.

129 Registration certificate—conditions

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

Example—

If the chief executive decides to issue a registration certificate to a person who is or has been an insolvent under administration, the chief executive may issue the certificate subject to a condition that the person not receive, bank or otherwise be responsible for dealing with trust account moneys.

- (2) A condition may limit or prohibit the performance of an activity authorised under this Act or the Administration Act.
- (3) If the chief executive decides to issue the certificate on conditions, the chief executive must give the applicant an information notice about the decision within 14 days after making the decision.

Division 7 Renewal and restoration of registration certificates

Subdivision 1 Renewal

130 Application for renewal

- (1) A real estate salesperson may only apply for renewal of the salesperson's registration certificate before the certificate expires.
- (2) The application must—
 - (a) be made to the chief executive in the approved form; and
 - (b) state the term of the registration being applied for; and
 - (c) be accompanied by—
 - (i) the application fee prescribed under a regulation; and
 - (ii) the registration certificate renewal fee prescribed under a regulation; and
 - (iii) if, before or when the application is made, a criminal history costs requirement is made of the real estate salesperson—the amount of the costs required to be paid.

131 Chief executive may renew or refuse to renew registration certificate

- (1) The chief executive must consider the renewal application and decide to renew or refuse to renew the registration certificate.
- (2) The chief executive may decide to renew the certificate only if the chief executive is satisfied—
 - (a) the real estate salesperson is a suitable person to obtain registration; and
 - (b) the application is made under section 130(2); and

[s 132]

- (c) the real estate salesperson meets the eligibility requirements, other than eligibility requirements of an educational nature, for the certificate.
- (3) If the chief executive decides to refuse the application, the chief executive must give the real estate salesperson an information notice about the decision within 14 days after making the decision.

132 Registration certificate taken to be in force while application for renewal is considered

If an application is made under section 130, the real estate salesperson's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the application for renewal is decided under section 131 or taken to have been withdrawn under section 119(3).

Subdivision 2 Restoration

133 Application for restoration

- (1) If a person's registration certificate expires, the person may apply for restoration of the certificate.
- (2) The application must—
 - (a) be made to the chief executive in the approved form; and
 - (b) be made within 3 months after the expiry; and
 - (c) state the term of the registration being applied for; and
 - (d) be accompanied by—
 - (i) the application fee prescribed under a regulation; and
 - (ii) the registration renewal fee prescribed under a regulation; and

- (iii) the registration restoration fee prescribed under a regulation; and
- (iv) if the person was required as a condition of the person's registration to hold insurance—proof of the currency of the insurance; and
- (v) if, before or when the application is made, a criminal history costs requirement is made of the person—the amount of the costs required to be paid.

134 Registration certificate taken to be in force while application for restoration is considered

If an application is made under section 133, the real estate salesperson's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the application for restoration is decided under section 134 or taken to have been withdrawn under section 119(3).

135 Chief executive may restore or refuse to restore registration certificate

- (1) The chief executive must consider the restoration application and may decide to restore or refuse to restore the registration certificate.
- (2) The chief executive may decide to restore the certificate only if the chief executive is satisfied—
 - (a) the person is a suitable person for registration as a real estate salesperson; and
 - (b) the application is made under section 133(2); and
 - (c) the person meets the eligibility requirements, other than eligibility requirements of an educational nature, for the certificate.

- (3) If the chief executive decides to refuse the application, the chief executive must give the person an information notice about the decision within 14 days after making the decision.
- (4) If the chief executive decides to restore the certificate—
 - (a) the certificate is taken to have been renewed on the day it would, apart from section 134, have expired (the *initial expiry date*); and
 - (b) to remove any doubt, it is declared that a thing done during the period starting on the initial expiry date and ending on the day the decision is made is taken to have been as validly done as it would have been if the certificate had been renewed immediately before the initial expiry date.

Division 8 Dealings with registration certificates

Subdivision 1 Transfer of registration certificate

136 Transfer of registration certificate prohibited

A registration certificate may not be transferred.

Subdivision 2 General

137 Offence to sell, lend or borrow registration certificate

- (1) A real estate salesperson must not—
 - (a) sell, lend or hire out the salesperson's registration certificate to someone else; or
 - (b) notify or advertise that a registration certificate is available for sale, loan or hire to someone else, whether registered or not; or

- (c) permit or allow someone else to hold out that the person is the holder of the registration certificate issued to the salesperson.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A person must not buy, borrow or hire a registration certificate.

Maximum penalty—200 penalty units or 2 years imprisonment.

138 Amendment of registration certificate conditions

- (1) The chief executive may amend the conditions of a registration certificate—

- (a) on the real estate salesperson's application; or
- (b) on the order of QCAT after a disciplinary hearing; or
- (c) on the chief executive's own initiative.

Note—

QCAT may deal with the conditions of a person's registration certificate under section 186.

- (2) An application under subsection (1)(a) must be made to the chief executive in the approved form and be accompanied by the application fee prescribed under a regulation.
- (3) Before making an amendment under subsection (1)(a), the chief executive must be satisfied the real estate salesperson meets the eligibility requirements the chief executive considers relevant to the amendment.
- (4) Before making an amendment under subsection (1)(c), the chief executive must—
 - (a) give written notice to the real estate salesperson—
 - (i) of the particulars of the proposed amendment; and
 - (ii) that the real estate salesperson may make written submissions to the chief executive about the proposed amendment before a stated day, not later

than 14 days after the notice is given to the salesperson; and

- (b) have regard to submissions made to the chief executive by the real estate salesperson before the stated day.
- (5) Subsection (4) does not apply if the chief executive decides the amendment must be made urgently to ensure compliance with this Act or the Administration Act.
- (6) If the chief executive decides to amend the conditions of a registration certificate under subsection (1)(c), the chief executive must give the real estate salesperson an information notice about the decision within 14 days after making the decision.
- (7) The amendment takes effect—
- (a) on the day the written notice of the amendment is given to the real estate salesperson; or
 - (b) if a later day is stated in the notice, on the stated day.
- (8) If the chief executive decides to refuse to make an amendment requested under subsection (1)(a), the chief executive must give the real estate salesperson an information notice about the decision within 14 days after making the decision.

139 Return of registration certificate for amendment of conditions

- (1) The chief executive may require a real estate salesperson to produce the salesperson's registration certificate for amendment or replacement within a stated period of not less than 14 days if the chief executive intends to—
- (a) amend the conditions of the certificate under section 138; or
 - (b) replace the certificate under section 147(5).
- (2) The holder must comply with a requirement under subsection (1), unless the holder has a reasonable excuse.

Maximum penalty for subsection (2)—100 penalty units.

140 Return of registration certificate when suspended or cancelled

- (1) A person whose registration certificate has been suspended or cancelled must return the registration certificate to the chief executive within 14 days after the suspension or cancellation, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply if section 142(5) or 143(2) applies.

141 Surrender of registration certificate

- (1) A real estate salesperson may surrender the salesperson's registration certificate by giving written notice, and returning the certificate, to the chief executive.

- (2) A registration certificate surrendered under this section stops having effect on the day it is surrendered.

Division 9 Immediate suspension and cancellation of registration certificates

142 Immediate suspension

- (1) This section applies if the chief executive believes, on reasonable grounds, that—

- (a) a real estate salesperson's registration certificate, or a renewal or restoration of the registration certificate, was obtained because of materially incorrect or misleading information; or

- (b) both—

- (i) an irregularity or deficiency exists in a licensee's trust account; and

- (ii) a real estate salesperson employed by the licensee may be responsible for the irregularity or deficiency; or
 - (c) a real estate salesperson—
 - (i) has contravened or is contravening this Act or the Administration Act; or
 - (ii) has contravened PAMDA; or
 - (iii) is likely or proposing to engage in conduct that would contravene this Act or the Administration Act.
- (2) The chief executive may suspend the real estate salesperson's registration certificate, whether or not disciplinary proceedings have been started under this Act.
- (3) The certificate may be suspended for the period, of not more than 28 days, and on the conditions, the chief executive decides.
- (4) The chief executive must give the real estate salesperson an information notice about the suspension within 14 days after suspending the registration.
- (5) The real estate salesperson must return the certificate to the chief executive within 14 days after receiving the notice, unless the real estate salesperson has a reasonable excuse.

Maximum penalty for subsection (5)—100 penalty units.

143 Immediate cancellation

- (1) A real estate salesperson's registration certificate is cancelled if the real estate salesperson is convicted of a serious offence.
- (2) The real estate salesperson must return the certificate to the chief executive within 14 days after the conviction, unless the real estate salesperson has a reasonable excuse.

Maximum penalty for subsection (2)—100 penalty units.

Division 10 General provisions about employee registration

144 Form of registration certificate

- (1) A registration certificate must be in the approved form.
- (2) However, the chief executive may approve—
 - (a) a form of certificate for office display purposes; and
Example—
a form of certificate that may be framed and displayed in an office
 - (b) a form of certificate for personal identification purposes.
- (3) The certificate must contain the following particulars—
 - (a) the name of the real estate salesperson;
 - (b) the date of issue of the certificate;
 - (c) the expiry date of the certificate;
 - (d) other particulars prescribed under a regulation.

145 Requirement to keep copy of registration certificate available for inspection

A real estate salesperson must keep a copy of the salesperson's registration certificate available for inspection at each place of business where the salesperson is employed as a real estate salesperson.

Maximum penalty—100 penalty units.

146 Term of registration certificate

A registration certificate may be issued for a 1-year or 3-year term.

147 Replacement certificates

- (1) A real estate salesperson may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged registration certificate.
- (2) The application must be made in the approved form.
- (3) The chief executive must grant the application if the chief executive is satisfied the certificate has been lost, stolen or destroyed, or damaged in a way to require its replacement.
- (4) If the chief executive grants the application, the chief executive must issue another registration certificate to the applicant to replace the lost, stolen, destroyed or damaged certificate.
- (5) The chief executive may also replace a registration certificate if—
 - (a) either—
 - (i) the holder of the registration certificate has given written notice to the chief executive of a prescribed change under section 149; or
 - (ii) the chief executive reasonably believes a prescribed change for the holder of the registration certificate has happened; and
 - (b) the chief executive is satisfied that the prescribed change requires a replacement of the registration certificate.
- (6) If the chief executive replaces a registration certificate under this section—
 - (a) the registration certificate continues to be subject to the same conditions and term that the registration certificate was subject to before being replaced; and
 - (b) the holder of the registration certificate must pay the chief executive the fee prescribed under a regulation.

148 Register of registration certificates

- (1) The chief executive must keep a register of registration certificates and applications for registration certificates (*registration certificate register*).
- (2) The registration certificate register may form part of the licence register.
- (3) The registration certificate register must contain the following particulars—
 - (a) for each applicant for a registration certificate—
 - (i) the applicant's name; and
 - (ii) the date of the application; and
 - (iii) the application number;
 - (b) for each real estate salesperson—
 - (i) the salesperson's name; and
 - (ii) the dates of issue and expiry of the salesperson's current registration certificate; and
 - (iii) any conditions imposed on the certificate; and
 - (iv) the salesperson's registration certificate number; and
 - (v) particulars of any surrender, suspension or cancellation of the salesperson's registration certificate.
- (4) A person may, on payment of the fee prescribed under a regulation, inspect, or get a copy of details in, the part of the register containing the particulars mentioned in subsection (3)—
 - (a) at a place or places decided by the chief executive; or
 - (b) by using a computer.
- (5) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.
- (6) The register may be kept in the way the chief executive considers appropriate.

- (7) In this section—
contain includes record and store.

149 Real estate salespersons to notify chief executive of changes in circumstances

- (1) A real estate salesperson must give written notice to the chief executive of a prescribed change in the salesperson's circumstances within 14 days after the change.

Maximum penalty—100 penalty units.

- (2) In this section—
prescribed change means a change prescribed under a regulation.

150 Production of registration certificate

A real estate salesperson must, if asked by a person with whom the salesperson is dealing, produce the salesperson's registration certificate for inspection by the person.

Maximum penalty—100 penalty units.

151 Acting as real estate salesperson

- (1) A person must not act as a real estate salesperson unless the person holds a registration certificate.

Maximum penalty—200 penalty units.

- (2) A person does not act as a real estate salesperson merely because the person, while performing duties as an employee of a real estate agent at the real estate agent's registered office or other place of business—
- (a) collects, and issues receipts for, rents; or
 - (b) gives a person a list, prepared by or for the real estate agent, of premises available for rent; or
 - (c) does something of an administrative nature relating to a thing the real estate agent does as a real estate agent.

(3) In this section—

act as a real estate salesperson, for a person, includes hold out that the person is a real estate salesperson.

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

Division 1 Preliminary

152 Definition for pt 6

In this part—

obtain includes being in any way concerned in obtaining.

153 Meaning of *beneficial interest*

(1) For this Act, a licensee is taken to have a *beneficial interest* in property, for example, if—

- (a) the purchase of the property is made for the licensee or an associate of the licensee; or
- (b) an option to purchase the property is held by the licensee or an associate of the licensee; or
- (c) the purchase of the property is made for a corporation (having not more than 100 members) of which the licensee or an associate of the licensee is a member; or
- (d) an option to purchase the property is held by a corporation (having not more than 100 members) of which the licensee or an associate of the licensee is a member; or

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

- (e) the purchase of the property is made for a corporation of which the real estate salesperson or an associate of the salesperson is an executive officer; or
- (f) an option to purchase the property is held by a corporation of which the real estate salesperson or an associate of the salesperson is an executive officer; or
- (g) the purchase of the property is made for an executive officer of a corporation of which the real estate salesperson or an associate of the salesperson is an executive officer; or
- (h) an option to purchase the property is held by an executive officer of a corporation of which the real estate salesperson or an associate of the salesperson is an executive officer; or
- (i) the purchase of the property is made for a member of a firm or partnership of which the real estate salesperson or an associate of the salesperson is also a member; or
- (j) the purchase of the property is made for a person carrying on a business for profit or gain and the real estate salesperson or an associate of the salesperson has, directly or indirectly, a right to participate in the income or profits of the person's business or the purchase of the property.

Division 2 Beneficial interest disclosure—licensees and real estate salespersons

154 Beneficial interest—options

- (1) This section applies to property placed by a person (*client*) with a property agent for sale.
- (2) The property agent commits an offence if the agent obtains from the client an option to purchase the property in which the agent has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.

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

Maximum penalty—200 penalty units or 3 years imprisonment.

- (4) The property agent must not sell the property if the agent obtains a beneficial interest in an option to purchase the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

Note—

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

155 Beneficial interest—other than options

- (1) This section applies to property placed by a person (*client*) with a property agent for sale, but does not apply if section 154 applies.

- (2) The property agent commits an offence if the agent obtains a beneficial interest in the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

- (3) A real estate salesperson employed by the property agent commits an offence if the salesperson obtains a beneficial interest in the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

- (4) A property agent or real estate salesperson does not contravene subsection (2) or (3) if—

(a) the property agent or real estate salesperson—

-
- (i) before a contract for the sale of the property is entered into, obtains the client's written acknowledgement in the approved form that the client—
 - (A) is aware that the property agent or real estate salesperson is interested in obtaining a beneficial interest in the property; and
 - (B) consents to the property agent or real estate salesperson obtaining the interest; and
 - (ii) acts fairly and honestly in relation to the sale; and
 - (b) the client is in substantially as good a position as the client would be if the property were sold at fair market value.

Note—

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

156 Return of beneficial interest if in form of commission

- (1) This section applies if—
 - (a) a person is convicted of an offence against section 155(2) or (3); and
 - (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or kept from someone (the *client*) for whom the person performed an activity an amount of commission.
- (2) The court must order the person to pay the amount to the client.
- (3) The order must be made whether or not a penalty is imposed on the conviction.
- (4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

- (5) This section does not prevent the client bringing a civil action against the person in relation to the offence.

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

157 Disclosures to prospective buyer

- (1) A residential property agent for the sale of residential property must disclose the following to any prospective buyer of the property—

- (a) any relationship, and the nature of the relationship (whether personal or commercial), the agent has with an entity (a *referred entity*) to whom the agent refers the buyer for professional services associated with the sale;

Examples of relationships for paragraph (a)—

- a family relationship
 - a business relationship, other than a casual business relationship
 - a fiduciary relationship
 - a relationship in which 1 person is accustomed, or obliged, to act under the directions, instructions, or wishes of the other
- (b) whether the agent derives or expects to derive a benefit from a referred entity and, if so, the amount or value of the benefit;
- (c) if the agent derives or expects to derive a benefit from a referred entity—
- (i) for a referred entity who is an individual—the individual’s full name; or
 - (ii) for a referred entity that has a registered business name—the registered business name;
- (d) the amount, value or nature of a benefit an entity has received, receives, or expects to receive in connection

with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property;

- (e) if an entity has received, receives, or expects to receive a benefit in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property—
- (i) for an entity that is an individual—the individual’s full name; or
 - (ii) for an entity that has a registered business name—the registered business name.

Examples for paragraphs (d) and (e) of entities who may receive a benefit—

- accountant
- finance broker
- financial adviser
- financier
- property valuer
- residential property agent
- seller
- solicitor

Maximum penalty—200 penalty units.

- (2) However, subsection (1)(d) and (e) does not apply if—
- (a) the entity is the residential property agent; and
 - (b) the benefit is the amount the entity received, receives or expects to receive by way of fee, charge or commission from the seller for the sale.
- (3) The disclosure is effective for subsection (1) only if it is—
- (a) given to the prospective buyer in the approved form before a contract of sale for the property is entered into; and
 - (b) acknowledged by the prospective buyer in writing on the approved form before a contract for the sale of the property is entered into.

(4) In this section—

benefit means monetary or other benefit.

residential property includes a proposed home that—

- (a) is to be erected or constructed under a domestic building contract; and
- (b) is being marketed in connection with marketing land.

residential property agent means—

- (a) a property agent; or
- (b) a real estate salesperson acting for a real estate agent; or
- (c) a person performing an activity in contravention of section 97(1); or
- (d) a person acting as a property agent in contravention of section 97(2); or
- (e) a person acting as a real estate salesperson in contravention of section 151(1).

Division 4 Disclosure of interest for residential property—property developers

158 Disclosures to prospective buyer

- (1) A property developer marketing residential property must disclose the following to a prospective buyer of the property—
 - (a) any relationship, and the nature of the relationship (whether personal or commercial), the property developer has with an entity (a ***referred entity***) to whom the property developer refers the buyer for professional services associated with the sale;

Examples of relationships for paragraph (a)—

- a family relationship
- a business relationship, other than a casual business relationship

-
- a fiduciary relationship
 - a relationship in which 1 person is accustomed, or obliged, to act in accordance with the directions, instructions, or wishes of the other
- (b) whether the property developer derives or expects to derive a benefit from a referred entity and, if so, the amount, value or nature of the benefit;
- (c) if the property developer derives or expects to derive a benefit from a referred entity—
- (i) for a referred entity who is an individual—the individual’s full name; or
 - (ii) for a referred entity that has a registered business name—the registered business name;
- (d) the amount, value or nature of a benefit an entity has received, receives, or expects to receive in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property;
- (e) if an entity has received, receives, or expects to receive a benefit in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property—
- (i) for an entity who is an individual—the individual’s full name; or
 - (ii) for an entity that has a registered business name—the registered business name;

Examples for paragraph (e) of an entity who may receive a benefit—

- accountant
- finance broker
- financial adviser
- financier
- property developer
- property valuer
- seller

- solicitor
- (f) that the property developer holds an interest of at least 15% in the property.
- Maximum penalty—200 penalty units.
- (2) The disclosure is effective for subsection (1) only if it is—
- (a) given to the prospective buyer in the approved form before a contract for the sale of the property is entered into; and
 - (b) acknowledged by the prospective buyer in writing on the approved form before a contract for the sale of the property is entered into.
- (3) Also, for subsection (1)(c), disclosure in compliance with the approved form is sufficient.
- (4) In this section—
- benefit* means monetary or other benefit.
- residential property* includes a proposed home that—
- (a) is to be erected or constructed under a domestic building contract; and
 - (b) is being marketed in connection with marketing land.

Part 7 Residential property sales

Division 1 Preliminary

159 Definitions for pt 7

In this part—

buyer, for a matter, includes the buyer's agent authorised to act for the buyer for the matter.

cooling-off period see section 166.

listed means listed on a stock exchange.

registered bidder, for an auction, means a person who is registered, as prescribed under a regulation, as a bidder for the auction.

relevant contract see section 160.

seller, for a matter, includes the seller's agent authorised to act for the seller for the matter.

termination penalty, for a relevant contract, means an amount equal to 0.25% of the purchase price under the relevant contract.

Division 2 Contracts this part applies to

160 Contracts this part applies to

- (1) This part applies to a contract, including a contract granting an option to purchase (a *relevant contract*)—
 - (a) for the sale of residential property; but
 - (b) does not include—
 - (i) a contract formed on a sale by auction; or
 - (ii) a contract entered into, by no later than 5p.m. on the second clear business day after the property was passed in at auction, with a registered bidder for the auction; or
 - (iii) a contract (a *later contract*) formed because of the exercise of an option granted under an earlier contract, if the parties to the later contract are the same as the parties to the earlier contract; or
 - (iv) a contract if the buyer is a publicly listed corporation or a subsidiary of a publicly listed corporation; or
 - (v) a contract if the buyer is the State or a statutory body; or

- (vi) a contract if the buyer is purchasing at least 3 lots at the same time, whether or not in the 1 contract.
- (2) This part also applies to any other contract prescribed under a regulation (also a *relevant contract*).
- (3) In this section—
formed on a sale by auction means formed on sale by auction—
 - (a) directly on the fall of the hammer, by outcry; or
 - (b) directly at the end of another similar type of competition for purchase.

Examples—

- 1 A contract for the sale of property is formed on a sale by auction when the auctioneer declares the property sold on the fall of the hammer.
- 2 A contract for the sale of property is not formed on a sale by auction when the property is passed in at auction and a bidder subsequently negotiates and purchases the property.
- 3 A contract for the sale of property is not formed on a sale by auction when the contract arises directly out of a sale by tender process.

Division 3 Accounting requirements for property developers for relevant contracts

161 Application of div 3

- (1) This division applies if—
 - (a) the seller under a relevant contract is a property developer; and
 - (b) the relevant contract provides for the payment by the buyer under the relevant contract of an amount (a *part payment*) for the purchase of property; and

-
- (c) the buyer is not entitled under the relevant contract to receive a registrable instrument of transfer of the property in exchange for the part payment.

Example of part payment—

a deposit payable under the relevant contract

- (2) However, this division does not apply if the part payment is secured by a prescribed guarantee.
- (3) In this section—

prescribed guarantee means a written guarantee—

- (a) given by a financial institution, for the buyer, in favour of the seller; and
- (b) under which the financial institution is bound to pay, on demand, to the buyer the amount of the guarantee (whether or not the guarantee secures other obligations).

162 Part payments must be paid to particular persons

- (1) The property developer must pay a part payment received under the relevant contract directly to 1 of the following—
- (a) the public trustee;
- (b) a law practice;
- (c) a property agent.

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

- (2) A provision of the relevant contract is void if it provides for payment of the part payment other than in accordance with subsection (1).
- (3) A provision of an instrument made in connection with the relevant contract is void if it provides for payment of the part payment other than in accordance with subsection (1).
- (4) In this section—

law practice means any of the following, within the meaning of the *Legal Profession Act 2007*, that has an office in Queensland—

- (a) an Australian legal practitioner who is a sole practitioner but not a barrister under that Act;
- (b) a law firm;
- (c) an incorporated legal practice;
- (d) a multi-disciplinary partnership.

163 Part payment to be held in trust

- (1) The part payment must be held—
 - (a) if the part payment is paid to the public trustee, by the public trustee in a trust account kept for this Act by the public trustee; or
 - (b) if the part payment is paid to an individual, by the individual in a trust account kept for this Act by—
 - (i) the individual; or
 - (ii) if the individual is a member of a firm or partnership, the firm or partnership of which the individual is a member.
- (2) The part payment must be dealt with by the public trustee, individual, firm or partnership in accordance with the law governing the operation of the public trustee's, individual's, firm's or partnership's trust account.

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

164 Buyer to be given copy of property valuation buyer pays for

- (1) This section applies if—

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- (a) it is a term of a relevant contract that the buyer must pay for a valuation of the property that, under the relevant contract, is not required to have been given to the buyer before the relevant contract is entered into; or
 - (b) the seller otherwise requires the buyer to pay for a valuation of the property that is not required to be given or to have been given to the buyer before the relevant contract is entered into.
- (2) Despite the term or requirement, the seller commits an offence if the seller fails to give the buyer a copy of the valuation before the relevant contract is entered into.
- Maximum penalty—200 penalty units.
- (3) The term or requirement is effective only if, before the relevant contract was entered into by the buyer, the buyer received the valuation and, in writing, acknowledged the receipt.
 - (4) Subsection (3) does not affect subsection (2).
 - (5) A contravention of subsection (2) does not affect the validity of the relevant contract.

Division 5 Matters to be included in proposed relevant contract

165 Proposed relevant contract to include particular matters when given to buyer for signing

- (1) Subsections (2) and (3) apply—
 - (a) to a seller who gives a proposed relevant contract for the first time to a proposed buyer for signing; and
 - (b) whether or not the proposed relevant contract has been signed by the seller.
- (2) The seller must ensure the proposed relevant contract includes the following conspicuously written words or words to like effect—

‘The contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the buyer terminates the contract during the statutory cooling-off period. It is recommended the buyer obtain an independent property valuation and independent legal advice about the contract and his or her cooling-off rights, before signing.’.

- (3) The seller must ensure the words are written in the contract once, immediately above, and on the same page as the place in the contract where the buyer signs to indicate the buyer’s intention to be bound by the contract.
- (4) Subsections (2) and (3) do not apply to a counteroffer by a seller to a relevant contract proposed by the buyer, unless the property the subject of the proposed relevant contract changes or the buyer changes, if—
 - (a) the seller amends the proposed relevant contract (whether by amending the text or preparing a new proposed relevant contract) other than by changing the residential property concerned or a party to the contract; and
 - (b) the seller gives the amended proposed relevant contract to the buyer as a counteroffer.
- (5) If subsection (2) or (3) is contravened—
 - (a) the seller commits an offence if the seller personally gave the proposed relevant contract to the proposed buyer; or
 - (b) the seller’s agent commits an offence if the seller’s agent gave the proposed relevant contract to the proposed buyer on behalf of the seller.

Maximum penalty for subsection (5)—200 penalty units.

Division 6 **Waiving and shortening cooling-off periods**

166 Cooling-off period

- (1) The *cooling-off period*, for a relevant contract, is a period of 5 business days—
 - (a) starting on—
 - (i) the day the buyer receives a copy of the relevant contract signed by both parties from the seller; or
 - (ii) if the buyer receives a copy of the relevant contract signed by both parties from the seller on a day other than a business day, the first business day after the day the buyer receives the copy from the seller; and
 - (b) ending at 5p.m. on the fifth business day.

Example—

Assume the buyer receives a copy of the relevant contract from the seller at any time on a Monday. Assume also that the cooling-off period is not affected by a day that is not a business day. The cooling-off period ends at 5p.m. on the following Friday.

- (2) For subsection (1), if the buyer signs the relevant contract after the seller signed it, the buyer is taken to have received a copy of the relevant contract from the seller when the buyer has both signed the relevant contract and communicated the buyer's acceptance of the seller's offer to the seller.

167 Waiving or shortening cooling-off period

- (1) A person who proposes to enter into a relevant contract as a buyer may waive the cooling-off period for the relevant contract by giving written notice to the seller of the waiver.
- (2) A buyer under a relevant contract may shorten the cooling-off period for the relevant contract by giving written notice to the seller of the shortening.

Division 7 Terminating relevant contracts

168 Terminating relevant contract during cooling-off period

- (1) A buyer who has not waived the cooling-off period for a relevant contract under section 167 may terminate the contract at any time during the cooling-off period or, if that period has been shortened under section 167(2), the shortened period, by giving a signed notice of termination to the seller.
- (2) The seller may deduct from any deposit paid under the relevant contract an amount not greater than the termination penalty.
- (3) The seller must, within 14 days after the relevant contract is terminated, refund to the buyer—
 - (a) any deposit paid under the relevant contract; or
 - (b) the balance of any deposit paid under the relevant contract after deducting an amount of not more than the termination penalty.

Maximum penalty—200 penalty units.

- (4) An amount payable to the buyer under subsection (3) is recoverable as a debt.

Part 8 Trust accounts

169 Keeping trust accounts

- (1) A principal licensee must keep a trust account under the Administration Act if an amount is likely to be received by the licensee for a transaction, or with written direction for its use, when performing the activities of a property agent or resident letting agent.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) In this section—

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

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

Part 9 QCAT Proceedings

Division 1 Preliminary

170 Definitions for pt 9

In this part—

licensee includes a person who has held a licence under this Act at any time within 3 years before a proceeding involving the person is started under this part.

real estate salesperson includes a person who was a real estate salesperson, or the holder of a registration certificate, at any time within 1 year before a proceeding under this part is started involving the person.

171 Jurisdiction

For this Act, QCAT has the following jurisdiction—

- (a) to hear and decide disciplinary matters involving a licensee or real estate salesperson;
- (b) to hear and decide applications under this Act relating to marketeers;

- (c) to review decisions of the chief executive relating to licensing or registration.

Division 2 Disciplinary proceedings

172 Grounds for starting disciplinary proceedings

- (1) The following are grounds for starting a disciplinary proceeding against a licensee or real estate salesperson under section 173—
 - (a) the licensee or salesperson has been convicted of an indictable offence or an offence against this Act or the Administration Act;
 - (b) the licensee or salesperson has contravened or breached—
 - (i) this Act; or
 - (ii) the Administration Act; or
 - (iii) a prescribed conduct provision; or
 - (iv) an undertaking given under part 10, division 2; or
 - (v) a corresponding law;
 - (c) the licensee or salesperson has been disqualified from holding an authorisation, similar to a licence or registration certificate, under a corresponding law;
 - (d) an amount has been paid from the fund because the licensee or salesperson did, or omitted to do, something that gave rise to the claim against the fund;
 - (e) the licensee or salesperson fraudulently or improperly obtained, or helped someone else to fraudulently or improperly obtain, a licence or registration certificate;
 - (f) the licensee or salesperson has failed to comply with an order made by a court, the former tribunal or QCAT;
 - (g) for a licensee—

- (i) the licensee is not a suitable person to hold a licence; or
 - (ii) the licensee has carried on, or is carrying on, business under a licence with someone who is not a suitable person to hold a licence; or
 - (iii) the licensee has, in carrying on a business or performing an activity, been incompetent or acted in an unprofessional way; or
 - (iv) the licensee has failed to ensure the licensee's employed licensees or real estate salespersons, or employees under the licensee's supervision—
 - (A) are properly supervised in the performance of their duties; or
 - (B) comply with this Act; or
 - (v) the licensee has failed to comply with a condition of the licensee's licence; or
 - (vi) the licensee is an executive officer of a corporation in relation to which QCAT makes an order under section 186; or
 - (vii) if the licensee is a corporation, an executive officer of the corporation is not a suitable person to hold a licence;
- (h) for a real estate salesperson—
- (i) the salesperson is not eligible to be employed as a real estate salesperson; or
 - (ii) the salesperson has, in performing an activity of a licensee, been incompetent or acted in an unprofessional way.
- (2) The chief executive must not start a disciplinary proceeding against an executive officer under subsection (1)(g)(vi) if the chief executive is satisfied—
- (a) the act or omission relevant to the proceeding against the corporation was done or made without the executive officer's knowledge; and

- (b) the executive officer could not, with reasonable diligence, have prevented the doing of the act or the making of the omission.

173 Starting disciplinary proceedings

- (1) The chief executive may apply, as provided under the QCAT Act, to QCAT to conduct a disciplinary proceeding.
- (2) The application must state—
 - (a) the grounds for starting the proceeding; and
 - (b) the conduct constituting the grounds; and
 - (c) that an application will be made for 1 or more orders under section 186.

Division 3 Marketeer proceedings

174 Grounds for starting marketeer proceeding

The following are grounds for starting a proceeding against a marketeer for orders under section 188 (*marketeer proceeding*)—

- (a) the marketeer has contravened or is contravening section 207, 208 or 209;
- (b) the marketeer is likely or proposing to engage in conduct that would contravene section 207, 208 or 209;
- (c) the marketeer is reasonably suspected of anything mentioned in paragraph (a) or (b).

175 How to start a proceeding

- (1) The chief executive may apply, as provided under the QCAT Act, to QCAT to conduct a marketeer proceeding.
- (2) The application must state—
 - (a) the grounds for starting the proceeding; and

- (b) the conduct constituting the grounds; and
- (c) that an application will be made for 1 or more orders under section 188.

Division 4 Review proceedings

176 Person dissatisfied with chief executive's decision may seek review

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

177 Stay of operation of decisions

- (1) A decision of the chief executive, other than a decision made under section 76 or 142, being reviewed is stayed for the purpose of securing the effectiveness of the review.
- (2) However, the period of a stay does not extend past the time when QCAT decides the application.

178 QCAT may extend time

- (1) QCAT may extend the time within which to seek review of a decision of the chief executive if it is satisfied—
 - (a) the application is made within 42 days after the person receives notice of the decision to be reviewed; and
 - (b) it is appropriate to extend time having regard to—
 - (i) the application generally; and
 - (ii) the justice of the matter generally.
- (2) No appeal lies against QCAT's decision under this section.

Division 5 Proceedings generally

Subdivision 1 Reference committee

179 Reference committee

- (1) A reference committee is established.
- (2) The reference committee consists of—
 - (a) the commissioner for fair trading; and
 - (b) 2 community representatives who are not public service employees.
- (3) One of the community representatives must have a demonstrated interest in civil liberties and the other must be a person the Minister considers has appropriate and relevant experience in fair trading issues.
- (4) The community representatives are to be appointed by the Governor in Council.
- (5) The community representatives' appointment term and conditions are as decided by the Governor in Council.

180 Reference committee functions

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

181 Reference committee may authorise application for public examination

- (1) If the chief executive considers that a public examination may help the chief executive decide whether or not to start a marketeer proceeding against a marketeer, the chief executive may refer the conduct to the reference committee.

- (2) After considering all relevant issues, the reference committee may authorise the chief executive to make an application to QCAT for a public examination under subdivision 2.
- (3) The reference committee must not authorise the chief executive to make the application unless satisfied—
 - (a) it is unlikely further investigation of the conduct by an inspector will be effective for deciding whether to start a marketeer proceeding; and
 - (b) a public examination may help find out whether a marketeer has contravened section 207, 208 or 209; and
 - (c) it is in the public interest to make the application.

Subdivision 2 Public examinations

182 QCAT may conduct public examination

- (1) QCAT may, on the chief executive's application, conduct a public examination that investigates the conduct of a marketeer to find out whether the marketeer has contravened section 207, 208 or 209.
- (2) The application may be made whether or not a marketeer proceeding has been started.
- (3) This division applies to a public examination as if it were a hearing before QCAT.

183 Procedure before public examination starts

- (1) Before the start of a public examination, QCAT must be satisfied each person to be examined has received written grounds for the public examination.
- (2) On being satisfied under subsection (1), QCAT must—
 - (a) decide a time and place for the public examination; and
 - (b) issue an attendance notice to each person to be examined.

- (3) If a person to be examined is a corporation, the attendance notice must require a named executive officer of the corporation to attend QCAT for examination.
- (4) The attendance notice must state—
 - (a) the time and place for the public examination decided by QCAT; and
 - (b) the person may make oral and written submissions at the public examination.
- (5) The chief executive must serve the attendance notice on the person to whom it was issued.
- (6) In this section—

attendance notice means an attendance notice issued under this Act.

184 Person must answer particular questions

- (1) This section applies if a person being examined at a public examination refuses to answer a question put to the person.
- (2) If QCAT requires the person to answer the question, QCAT must advise the person of the following—
 - (a) that if the answer might incriminate the person, the person may claim, before giving the answer, that giving the answer might incriminate the person;
 - (b) the effect that making the claim will have on the admissibility of the answer in any proceeding against the person.
- (3) The person must answer the question, unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.
- (4) It is not a reasonable excuse to fail to answer the question that answering might tend to incriminate the person.
- (5) The answer is not admissible in any criminal or civil proceeding against the person, other than—

- (a) the public examination of a person; or
 - (b) a proceeding to review a reviewable decision; or
 - (c) an appeal against QCAT's decision to require the answer; or
 - (d) a perjury proceeding.
- (6) In this section—

perjury proceeding means a proceeding in which the falsity or misleading nature of the answer is relevant.

reviewable decision means a decision of the chief executive mentioned in schedule 1.

Subdivision 3 Stopping particular conduct

185 Stopping particular conduct

- (1) This section applies if a marketeer proceeding has been started against a marketeer and, on the chief executive's application, QCAT is satisfied, or is satisfied there is a reasonable suspicion, that the marketeer—
 - (a) has contravened or is contravening section 207, 208 or 209; or
 - (b) is likely or proposing to engage in conduct that would contravene section 207, 208 or 209.
- (2) QCAT may, by order, prohibit the marketeer from engaging in conduct that, alone or together with other conduct, is a contravention of section 207, 208 or 209, until the end of the marketeer proceeding.
- (3) QCAT may make an order under this section on the chief executive's application made without notice to the marketeer but, in that case, QCAT must allow the marketeer a reasonable opportunity to show cause why the order should not be confirmed.

- (4) If QCAT, after considering the marketeer's evidence and representations, if any, and any further evidence or representations of the chief executive, is not satisfied the order should continue in force, QCAT must cancel the order.
- (5) A person must not contravene an order under this section.
Maximum penalty—540 penalty units.
- (6) In a proceeding against a person under this Act, the making of an order under this section is evidence of the facts or circumstances giving rise to the making of the order.
- (7) An order under this section has effect on the giving of a copy of the order to the marketeer.

Subdivision 4 QCAT's orders

186 Orders QCAT may make on disciplinary hearing

- (1) QCAT may make 1 or more of the following orders against a person in relation to whom QCAT finds grounds exist to take disciplinary action under this Act—
 - (a) an order reprimanding the person;
 - (b) an order that the person pay to the State, within the period stated in the order, a fine of not more than—
 - (i) for an individual—200 penalty units; or
 - (ii) for a corporation—1,000 penalty units;
 - (c) an order that the person pay compensation (inclusive of any commission to which the person is not entitled) to someone else who has suffered loss or damage because of the act or omission that resulted in the finding;
 - (d) that the person be disqualified permanently, or for the period stated in the order, from holding a licence or registration certificate;
 - (e) another order QCAT considers appropriate to ensure the person complies with this Act.

- (2) If the person is the holder of a licence or registration certificate, QCAT may also make 1 or more of the following orders against the person—
 - (a) an order that the person’s licence or registration certificate be suspended for the period stated in the order;
 - (b) an order that the licence or registration certificate be cancelled;
 - (c) for a licensed individual who is an executive officer of a corporation, an order that the individual be disqualified permanently from being an executive officer of a corporation that holds a licence permanently or for a stated period;
 - (d) an order imposing conditions on, or amending or revoking the conditions of, the person’s licence or registration certificate.
- (3) If QCAT makes an order mentioned in subsection (2)(b) against an individual, QCAT must also make an order that the person be disqualified for a stated period or permanently from holding a licence or registration certificate.
- (4) QCAT may not make an order under this section disqualifying the person from holding a licence or registration certificate if QCAT is satisfied a court has, for the grounds giving rise to the disciplinary proceeding—
 - (a) been asked to make an order under section 227(3) disqualifying the person from holding a licence or registration certificate; and
 - (b) declined to do so.
- (5) The chief executive may recover a fine, ordered by QCAT to be paid by the person to the chief executive, as a debt owing to the chief executive in a court with jurisdiction to recover debts up to the amount of the fine.

187 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) This section does not apply if section 185 applies.
- (3) QCAT may, by order, prohibit the person who is doing, or is about to do, the thing (the *prohibited person*) from starting or continuing to do the thing.
- (4) 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.
- (5) 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.
- (6) A person must not contravene an order under this section.
Maximum penalty—540 penalty units.
- (7) An order under this section has effect on the giving of a copy of the order to the prohibited person.

188 Orders QCAT may make in a marketeer proceeding

- (1) This section applies if, in a marketeer proceeding, QCAT is satisfied a marketeer has contravened section 207, 208 or 209.
- (2) QCAT may make 1 or more of the following orders—
 - (a) an order that the marketeer pay to the State, within the period stated in the order, an amount of not more than the equivalent of—
 - (i) for an individual—200 penalty units; or
 - (ii) for a corporation—1,000 penalty units;
 - (b) if the marketeer is the holder of a licence or registration certificate when the order is made, an order—

- (i) imposing conditions on, or amending or revoking the conditions of, the marketeer's licence or registration certificate; or
 - (ii) that the marketeer's licence or registration be suspended for a stated period; or
 - (iii) the marketeer's licence or registration certificate be cancelled;
- (c) if the marketeer is not the holder of a licence or registration certificate when the order is made—an order that the marketeer be disqualified, for a stated period, of not more than 5 years, from holding a licence or registration certificate;
- (d) if the marketeer is a corporation—an order, that an individual who is an executive officer of the corporation, be disqualified, for a stated period, of not more than 5 years, from holding a licence;
- (e) if the marketeer is an executive officer of a corporation—an order that the marketeer be disqualified permanently, or for the period stated in the order, from being an executive officer of a corporation that holds a licence;
- (f) an order restricting the way the marketeer conducts the business of the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property in Queensland for a stated period, of not more than 5 years;
- (g) an order that the marketeer pay to a person who has suffered financial loss, a stated amount of compensation decided by QCAT of not more than the limit of a Magistrates Court's civil jurisdiction;
- (h) another order QCAT considers appropriate to ensure the marketeer complies with this Act.
- (3) If QCAT makes an order mentioned in subsection (2)(b)(iii) against an individual, QCAT must also make an order that the marketeer be disqualified for a stated period or permanently from holding a licence or registration certificate.

- (4) However, QCAT may make an order under subsection (2)(a) or (f) against a marketeer who is not licensed or a real estate salesperson only on the basis of evidence, submissions and other information received in accordance with the evidentiary law and practice applicable to a civil proceeding in a Magistrates Court.
- (5) QCAT must decide to make an order for compensation if—
 - (a) QCAT proposes to make an order requiring a marketeer to pay an amount to the chief executive under subsection (2)(a)(i) and to pay compensation under subsection (2)(g); and
 - (b) the marketeer does not have the financial resources to pay both.
- (6) The executive officers of a corporation are jointly and severally liable to pay an amount not paid by the corporation if—
 - (a) QCAT orders the corporation to pay an amount to the chief executive under subsection (2)(a)(ii) or compensation under subsection (2)(g); and
 - (b) the corporation does not have the financial resources to pay either or both.
- (7) It is a defence to a liability under subsection (6) for an executive officer to prove that—
 - (a) if the officer was in a position to influence the conduct of the corporation relating to the relevant contravention—the officer took all reasonable steps to ensure the relevant contravention did not happen; or
 - (b) the officer was not in a position to influence the conduct of the corporation relating to the relevant contravention.
- (8) For subsection (7)(a), it is sufficient for the executive officer to prove the act or omission that was the relevant contravention was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the relevant contravention did not happen.
- (9) In this section—

relevant contravention, in relation to a corporation, means the contravention by the corporation of section 207, 208 or 209.

189 Criteria for deciding amount to be ordered

To decide the amount a marketeer may be ordered to pay under section 188, QCAT must consider—

- (a) the marketeer’s conduct before and after the contravention; and
- (b) whether the conduct forming the basis of the contravention was deliberate; and
- (c) the period over which that conduct happened; and
- (d) the amount of financial loss caused by the contravention; and
- (e) any similar past conduct of the marketeer, including conduct happening before the commencement of this section; and
- (f) the marketeer’s financial position; and
- (g) whether the conduct forming the basis of the contravention could have been prevented; and
- (h) if the marketeer is a corporation—the extent to which the executive officers of the corporation knew or should have known of the contravention; and
- (i) any action the marketeer took to remedy the contravention including, for example, compensating persons who suffered financial loss because of it; and
- (j) the extent to which the marketeer cooperated with the chief executive to remedy the contravention and prevent future contraventions; and
- (k) any other factor QCAT considers relevant.

Subdivision 5 Chief executive’s right of appeal

190 Appeal

- (1) The chief executive may appeal to the appeal tribunal against a decision of QCAT under this Act, 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.

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

Division 1 Injunctions

191 Grounds for injunction

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

- (a) a contravention of this Act or a prescribed conduct provision; or
- (b) attempting to contravene this Act or a prescribed conduct provision; or
- (c) aiding, abetting, counselling or procuring another person to contravene this Act; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, another person to contravene this Act; or

- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by another person of this Act; or
- (f) conspiring with other persons to contravene this Act.

192 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.

193 When injunction may be granted

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

194 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 the 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.

195 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 a licensee (whether or not the person is licensed or the business is carried on as part of, or incidental to, the carrying on of another business)—
 - (a) for a stated period; or
 - (b) other than on stated terms and conditions.
- (3) 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.

196 Undertakings as to costs

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

Division 2 Undertakings

197 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 or a prescribed conduct provision, 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 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 199.

198 Undertaking about other matter

Without limiting section 197, 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

199 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, or PAMDA, 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 written notice of its variation or withdrawal.
- (4) The variation or withdrawal takes effect when written notice of the variation or withdrawal is received by the person.

200 Enforcement of undertakings

- (1) If the chief executive believes on reasonable grounds a person who gave an undertaking has contravened a term of the undertaking, the chief executive may apply to the District Court for an order under this section.
- (2) If the District 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 another person 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.

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- (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.

201 Register of undertakings

- (1) The chief executive must keep a register of undertakings.
- (2) The register must contain a copy of each undertaking under this division.
- (3) The chief executive may publish the information contained in the register on the department's website.
- (4) A person may, on payment of the fee prescribed under a regulation, inspect, or get a copy of details in, the register—
 - (a) at a place or places decided by the chief executive; or
 - (b) by using a computer.
- (5) The person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.
- (6) The register may be kept in the way the chief executive considers appropriate.

Division 3 Preservation of assets

202 Powers of court for preservation of assets

- (1) This section applies if any of the following proceedings have been started against a marketeer—
 - (a) a proceeding before the District Court for the grant of an injunction;

- (b) a proceeding before the District Court about a contravention of an undertaking under division 2;
 - (c) a marketeer proceeding;
 - (d) a proceeding before the District Court under division 4 for a civil penalty.
- (2) On the chief executive's application, the District Court may make an order mentioned in subsection (3) if satisfied—
- (a) it is necessary or desirable to preserve property held by or for the marketeer, or part or all of an amount payable to or at the request of the marketeer, because the marketeer is or may become liable under this Act—
 - (i) to pay an amount to the State; or
 - (ii) to pay compensation; or
 - (iii) to refund an amount; or
 - (iv) to transfer, sell or return other property; and
 - (b) it will not unduly prejudice the rights and interests of any other person.
- (3) The orders the court may make are—
- (a) an order prohibiting a person who owes an amount to the marketeer or an associate of the marketeer from paying all or part of the amount to, or to another person at the request of, the marketeer or associate; and
 - (b) an order prohibiting a person holding property for the marketeer or an associate of the marketeer from transferring all or any of the property to, or to another person at the request of, the marketeer or associate; and
 - (c) an order prohibiting the taking, by any person, of the property of the marketeer or an associate of the marketeer out of the State; and
 - (d) if the marketeer is an individual—an order appointing a receiver or trustee of all or part of the property of the marketeer or an associate of the marketeer and providing for the powers of the receiver or trustee.

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- (4) Subject to subsection (5), the order may be expressed to operate—
- (a) for a stated period; or
 - (b) until proceedings under another provision of this Act for which the order was made have ended.
- (5) An application and an order may be made under this section without notice to, and in the absence of, the marketeer or the associate, but the order must not be expressed to operate for a period of more than 30 days.
- (6) A person to whom the order applies must comply with the order.

Maximum penalty—540 penalty units.

- (7) In this section—
- associate*, of a marketeer, means—
- (a) a person holding property for the marketeer; or
 - (b) if the marketeer is a corporation—a wholly-owned subsidiary of the marketeer.

prohibit means prohibit absolutely or on conditions.

request includes direction.

take includes send and transfer.

transferring, in relation to property, means transferring, paying or otherwise parting with possession of the property.

Division 4 Civil penalties and compensation orders for particular contraventions

203 Application for order imposing civil penalties

- (1) If the chief executive reasonably believes a person has contravened section 207, 208 or 209, the chief executive may apply to the District Court for an order requiring a person (the *respondent*)—

[s 204]

- (a) to pay to the State an amount as a penalty (a *money penalty*); or
 - (b) to pay to another person who suffered financial loss because of the contravention an amount as compensation.
- (2) The application may be made with another application the chief executive may make under this part.

204 Orders District Court may make

- (1) This section applies if the District Court is satisfied the respondent has contravened section 207, 208 or 209.
- (2) The court may order the respondent to pay to the State a money penalty of not more than the limit of the court's civil jurisdiction for each contravention.
- (3) If satisfied another person has suffered financial loss because of the contravention, the court may order the respondent to pay to the person an amount of compensation decided by the court of not more than the limit of the court's civil jurisdiction.
- (4) The court must decide to make an order for the respondent to pay compensation rather than a money penalty if—
 - (a) the respondent is an individual; and
 - (b) the court proposes to order the respondent to pay a money penalty and compensation under subsection (3); and
 - (c) the respondent does not have the resources to pay both.
- (5) If a corporation is ordered to pay a money penalty or compensation, the executive officers of the corporation are jointly and severally liable to pay the amount of the penalty or compensation, or any part of it, if the corporation does not have enough financial resources to pay the amount or the part.
- (6) It is a defence to a liability under subsection (5) for an executive officer to prove that—

- (a) if the officer was in a position to influence the conduct of the corporation relating to the relevant contravention—the officer took all reasonable steps to ensure the relevant contravention did not happen; or
 - (b) the officer was not in a position to influence the conduct of the corporation relating to the relevant contravention.
- (7) For subsection (6)(a), it is sufficient for the executive officer to prove that the act or omission that was the relevant contravention was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the relevant contravention did not happen.
- (8) In this section—
- relevant contravention*, in relation to a corporation, means the contravention by the corporation of section 207, 208 or 209.

205 Criteria for deciding amount to be ordered

To decide an amount a respondent may be ordered to pay under section 204, the District Court must consider—

- (a) the respondent's conduct before and after the contravention; and
- (b) whether the conduct forming the basis of the contravention was deliberate; and
- (c) the period over which that conduct happened; and
- (d) the amount of financial loss caused by the contravention; and
- (e) any similar past conduct of the respondent, including conduct happening before the commencement of this section; and
- (f) the respondent's financial position; and
- (g) whether the conduct forming the basis of the contravention could have been prevented; and

- (3) For a prosecution under subsection (2)(a), it is enough for the prosecution to prove the licensee or real estate salesperson dishonestly converted an amount belonging to someone else to the licensee's or salesperson's own use or someone else's use without having to prove the amount belonged to a particular person.
- (4) If conduct alleged to constitute an offence under subsection (2) is recurrent so that, but for this subsection, each instance of the conduct would allegedly constitute a separate offence, 2 or more instances of the conduct are to be taken to constitute 1 alleged offence committed over the period stated in the complaint or indictment in relation to the conduct, and may be charged and proceeded against on 1 charge.
- (5) A licensee or real estate salesperson, in performing the activities of a licensee or real estate salesperson, must not, including by the rendering of an account, represent that the licensee or salesperson has received an amount from someone else when the licensee or salesperson has not in fact received the amount.

Maximum penalty—540 penalty units.

- (6) In this section—

licensee includes a former licensee and a person who is not licensed, but who acts as a licensee.

real estate salesperson includes a former real estate salesperson and a person who is not a real estate salesperson, but who acts as a real estate salesperson.

Note—

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

207 Misleading conduct

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

Notes—

- 1 For remedies for a contravention, see part 9 (QCAT proceedings).
- 2 Also, a person may make a claim, under the Administration Act, against the fund if the person suffers financial loss because of a contravention of this section.

208 Unconscionable conduct

- (1) A marketeer must not, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property in Queensland, engage in conduct that is, in all the circumstances, unconscionable.

Note—

For remedies for a contravention, see part 9 (QCAT proceedings).

- (2) Without limiting the matters to which regard may be had to decide whether a marketeer has contravened subsection (1), regard may be had to—
 - (a) the relative strengths of the bargaining positions of the marketeer and the buyer of the property; and
 - (b) whether, because of conduct engaged in by the marketeer, the buyer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the marketeer; and
 - (c) whether the buyer was able to understand any documents relating to the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property; and
 - (d) whether undue influence or pressure was exerted on, or any unfair tactics were used against, the buyer or the person acting for the buyer by the marketeer in connection with the marketing of the property; and
 - (e) the amount for which, and the circumstances under which, the buyer could have acquired an equivalent or similar property from another person; and

- (f) the extent to which the marketeer's conduct towards the buyer was consistent with the marketeer's conduct in similar transactions between the marketeer and other like buyers; and
- (g) the extent to which the marketeer unreasonably failed to disclose to the buyer—
 - (i) any intended conduct of the marketeer that might affect the interests of the buyer; and
 - (ii) any risks to the buyer arising from the marketeer's intended conduct, if the risks are risks the marketeer should have foreseen would not be apparent to the buyer; and
- (h) the extent to which the marketeer failed to disclose to the buyer—
 - (i) any relationships of the marketeer to other marketeers in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property; or
 - (ii) anything required to be disclosed under this Act; and
- (i) the extent to which the marketeer was unwilling to negotiate the terms and conditions of any contract for the sale of the property with the buyer; and
- (j) whether or not it was reasonably practicable for the buyer to negotiate for the alteration of, or to reject, any of the provisions of the contract for the property; and
- (k) whether or not the buyer or a person who represented the buyer was reasonably able to protect the interests of the buyer because of the age or physical or mental condition of the buyer or the person who represented the buyer; and
- (l) whether or not, and if so when, the buyer obtained, or an opportunity was made available to the buyer to obtain, independent legal, valuation or other expert advice; and

- (m) the extent to which the provisions of the contract and the contract's legal and practical effect were accurately explained to the buyer and whether or not the buyer understood the provisions and their effect; and
- (n) whether the marketeer took measures to ensure the buyer understood the nature and implications of the transaction and, if so, the adequacy of the measures; and
- (o) whether at the time the contract was entered into, the marketeer knew, or could have ascertained by reasonable inquiry of the buyer at the time, that the buyer could not pay in accordance with its terms or not without substantial hardship; and
- (p) the extent to which the marketeer and the buyer acted in good faith.

Note—

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

209 False representations and other misleading conduct relating to residential property

- (1) A marketeer must not, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property in Queensland, represent in any way to someone else anything that is false or misleading.

Note—

For remedies for a contravention, see part 9 (QCAT proceedings).

- (2) Without limiting subsection (1), a marketeer must not, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property, or the possible sale of residential property, in Queensland—
 - (a) represent that the person has a sponsorship, approval or affiliation the person does not have; or

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- (b) make a false or misleading representation about the following—
- (i) the nature of the interest in the property;
 - (ii) the price payable for the property;
 - (iii) the location of the property;
 - (iv) the characteristics of the property;
 - (v) the use to which the property is capable of being put or may lawfully be put;
 - (vi) the existence or availability of facilities associated with the property;
 - (vii) the value of the property at the date of the sale;
 - (viii) the potential income from the leasing of the property;
 - (ix) if the property has been previously sold, the date of the sale and the consideration for the sale;
 - (x) how the purchase of the property may affect the incidence of income taxation on the buyer; or
- (c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.

Note—

For remedies for a contravention, see part 9 (Proceedings).

- (3) Without limiting subsection (1) or (2), a representation is taken, for the subsection, to be false or misleading if it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the representation indicates that state of affairs does exist.
- (4) Also, if a person makes a representation relating to a matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading.
- (5) The onus of establishing the person had reasonable grounds for making the representation is on the person.

(6) It is not a defence to a proceeding for a contravention of subsection (1) or (2) for the marketeer to prove that an agreement with the person was terminated or that the person did not enter into an agreement because of the representation.

(7) In this section—

false or misleading, for a representation, includes the wilful concealment of a material fact in the representation.

Note—

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

210 Application of ss 207, 208 and 209

(1) Sections 207, 208 and 209 are in addition to, and do not limit, another Act or law about conduct mentioned in them.

Example—

Australian Consumer Law (Queensland), section 30 (False or misleading representations about sale etc. of land)

(2) Sections 207, 208 and 209 apply to conduct, whether happening in or outside Queensland, relating to residential property in Queensland.

211 Offensive conduct relating to residential property

(1) A marketeer must not unduly harass another person in connection with the sale or possible sale of residential property in Queensland.

Maximum penalty—540 penalty units.

(2) In this section—

unduly harass includes—

- (a) the use of any physical force; and
- (b) coercion.

212 False representations about property

- (1) A licensee or real estate salesperson must not represent to someone else anything that is false or misleading relating to the letting, exchange or sale of real property.

Maximum penalty—540 penalty units.

- (2) Without limiting subsection (1), a licensee or real estate salesperson must not, in connection with the sale, or the possible sale, of an interest in real property or in connection with the promotion of the sale of an interest in real property, represent to someone else anything that is false or misleading relating to—
- (a) the value of the real property at the date of sale; or
 - (b) the potential income from the leasing of the land; or
 - (c) if the land has been previously sold, the date of the sale and the consideration for the sale; or
 - (d) how the purchase of the real property may affect the incidence of income taxation on the buyer.

Maximum penalty—540 penalty units.

- (3) Without limiting subsection (1) or (2), a representation is taken, for the subsection, to be false or misleading if it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the representation indicates that the state of affairs does exist.
- (4) Also, if a person makes a representation relating to a matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading.
- (5) The onus of establishing the person had reasonable grounds for making the representation is on the person.
- (6) It is not a defence to a prosecution under subsection (1) or (2) for the defendant to prove that an agreement with the person was terminated or that the person did not enter into an agreement because of the representation.

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- (7) This section does not limit another Act or law about false or misleading representations.

Example—

Australian Consumer Law (Queensland), section 30 (False or misleading representations about sale etc. of land)

- (8) In this section—

false or misleading, for a representation, includes the wilful concealment of a material fact in the representation.

Note—

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

213 Representation of price of property to seller—auctioneer

- (1) This section applies if a person wanting to sell residential property (a ***seller***) asks an auctioneer for information about the price at which the residential property that is to be, or may be, offered for sale by auction (the ***offered property***) is likely to be sold if it is sold by auction.
- (2) The auctioneer must give the seller a written notice stating that if the seller does not set a price at which the seller agrees to sell the offered property (a ***reserve price***), the offered property will be sold for the price offered by the highest of any bids made when the property is auctioned.

Maximum penalty—200 penalty units.

- (3) If the seller appoints the auctioneer to sell the offered property, the auctioneer must obtain from the seller before the offered property is auctioned a written notice stating—
- (a) if the seller sets a reserve price—the reserve price; or
- (b) if the seller does not set a reserve price—that the seller understands the offered property will be sold for the highest of any bids made when the offered property is auctioned.

Maximum penalty—200 penalty units.

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- (4) An auctioneer must not help a seller decide the reserve price for offered property unless, before the seller decides the price, the auctioneer gives the seller—
- (a) a copy of a comparative market analysis for the offered property; or
 - (b) if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the auctioneer decided the market value of the property.

Maximum penalty—540 penalty units.

214 Auctioneer not to disclose reserve or other price

- (1) This section applies if residential property is to be, may be or is being, offered for sale by auction (*offered property*).
- (2) The auctioneer must not disclose to a person other than a person acting for the seller in relation to the sale—
- (a) the reserve price set for the offered property; or
 - (b) an amount the auctioneer considers is a price likely to result in a successful or acceptable bid for the offered property; or
 - (c) a price guide for the offered property.

Maximum penalty—540 penalty units.

- (3) However, if during the auction, the reserve price is reached or exceeded, the auctioneer does not contravene subsection (2) only by disclosing, to persons present at the auction, that the reserve price has been met.

Example of a disclosure that the reserve price has been met—

the auctioneer announcing during the auction that the property is on the market

- (4) Also, an auctioneer does not contravene subsection (2)(c) only because a price or price range for the property is disclosed by the auctioneer to an electronic listings provider to establish search criteria for listing the property for sale on the provider's website or other electronic medium.

[s 215]

- (5) However, subsection (4) applies only if the auctioneer is satisfied on reasonable grounds that—
- (a) the electronic listings provider will list the property for sale on the website without disclosing the price or price range; and
 - (b) the listing will include any statement prescribed under a regulation.
- (6) If an auctioneer gives a copy of a comparative analysis or a written explanation (*market information*) to a seller under section 213(4), the auctioneer must not give the market information to a person without the seller’s written approval.

Maximum penalty—540 penalty units.

215 Representation of price of property—real estate agent

- (1) This section applies if a person wanting to sell residential property asks a real estate agent for information about the price at which residential property that is to be, or may be, offered for sale, whether or not by auction, (*offered property*) is likely to be sold.
- (2) If the real estate agent decides to give the person the information, the real estate agent must, when giving the person the information, give the person—
- (a) a copy of a comparative market analysis for the offered property; or
 - (b) if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the real estate agent decided the market value of the property.

Maximum penalty—540 penalty units.

216 Real estate agent not to disclose reserve or other price

- (1) This section applies if residential property is to be, may be or is being, offered for sale, whether or not by auction (*offered property*).

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- (2) If the offered property is to be, may be or is being offered for sale by auction, the real estate agent must not disclose to a person other than a person acting for the seller in relation to the sale—
- (a) the reserve price set for the offered property; or
 - (b) an amount the real estate agent considers is a price likely to result in a successful or acceptable bid for the offered property; or
 - (c) a price guide for the offered property.

Maximum penalty—540 penalty units.

- (3) If the property is not to be offered for sale by auction and the seller has instructed the real estate agent not to disclose the price at which the seller is willing to sell the offered property, the real estate agent must not disclose to a person, other than a person acting for the seller in relation to the sale—
- (a) an amount the real estate agent considers is a price likely to result in a successful or acceptable bid for the offered property; or
 - (b) a price guide for the offered property.

Maximum penalty—540 penalty units.

- (4) A real estate agent does not contravene subsection (2)(c) or (3)(b) only because a price or price range for the property is disclosed by the real estate agent to an electronic listings provider to establish search criteria for listing the property for sale on the provider's website or other electronic medium.
- (5) However, subsection (4) applies only if the real estate agent is satisfied on reasonable grounds that—
- (a) the electronic listings provider will list the property for sale on the website without disclosing the price or price range; and
 - (b) the listing will include any statement prescribed under a regulation.

- (6) If a real estate agent gives a copy of a comparative analysis or a written explanation (*market information*) to a seller under

section 215(2), the real estate agent must not give the market information to a person without the seller's written approval.

Maximum penalty—540 penalty units.

217 Chief executive to ask for substantiation of representations made by marketeers

- (1) This section applies if the chief executive believes, on reasonable grounds, that a marketeer has made a representation in contravention of section 209(1) or (2).
- (2) The chief executive may, by written notice, ask the person to give to the chief executive written proof supporting the representation.
- (3) The notice must—
 - (a) state a day, at least 14 days after the day the notice is given to the person, by which the person must give the proof to the chief executive; and
 - (b) warn the person it is an offence to fail to comply with the notice by the stated day, unless the person has a reasonable excuse.
- (4) The person must comply with the notice by the stated day, unless the person has a reasonable excuse.

Maximum penalty—540 penalty units.

- (5) It is a reasonable excuse for an individual to fail to comply with subsection (4) that complying with the subsection might tend to incriminate the individual.

218 Chief executive's power to ask for substantiation of representations made by licensees or real estate salespersons

- (1) This section applies if the chief executive believes, on reasonable grounds, that a licensee or real estate salesperson has made a representation in contravention of section 212(1) or (2).

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- (2) The chief executive may, by written notice, ask the person to give the chief executive written proof supporting the representation.
 - (3) The notice must—
 - (a) state a day, at least 14 days after the day the notice is given to the person, by which the person must give the proof to the chief executive; and
 - (b) warn the person it is an offence to fail to comply with the notice by the stated day, unless the person has a reasonable excuse.
 - (4) The person must comply with the notice by the stated day, unless the person has a reasonable excuse.
Maximum penalty—100 penalty units.
 - (5) It is a reasonable excuse for an individual to fail to comply with subsection (4) that complying with the subsection might tend to incriminate the individual.

219 Offence to charge fee for providing documents etc.

- (1) A licensee or real estate salesperson must not charge a fee for the provision, preparation or completion of a document for a transaction relating to, or arising out of, the performance of a licensee's activities.
Maximum penalty—200 penalty units or 1 year's imprisonment.
- (2) Subsection (1) does not limit the *Legal Profession Act 2007*, section 24 or 25.

220 False or misleading statements

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.

221 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.

222 Prohibited practices

- (1) A person must not, for reward, supply or undertake to supply, advertise, or hold out, that the person will supply to another person addresses or other particulars of—

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

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

- (2) Subsection (1) does not apply to a property agent that has been appointed by the landlord or seller of the places of residence or land or interests in the places of residence or land to perform an activity and has the landlord's or seller's consent to supply the particulars.

- (3) A person (the *first person*) must not make an unsolicited invitation to another person to attend a property information session unless the first person is a property developer, a property agent or someone acting for the developer or agent.

Maximum penalty—200 penalty units or 2 years imprisonment.

Division 2 Evidentiary matters

223 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 registrar 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 registration certificate under this Act; or
- (ii) was given a stated notice, order, requirement or direction under this Act.

224 Entries in licensee's documents

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

Division 3 Proceedings

225 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 for 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 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.

226 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 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.

227 Power of court

- (1) A court may, in addition to any other penalty it may impose, order that a licensee's licence or a real estate salesperson's registration certificate be suspended for a stated period or cancelled if the licensee or real estate salesperson has been convicted of an offence against this Act.

- (2) If a court makes an order under subsection (1), in relation to an individual, that a licence or registration certificate be cancelled, the court must also order that the person be disqualified, for the period stated in the order, from holding a licence or registration certificate.
- (3) The court may also order that a person convicted of an offence against this Act, who is not disqualified under subsection (2) in relation to the conviction, be disqualified from holding a licence or registration certificate under this Act for a stated period or permanently.
- (4) The court may make an order under subsection (1) or (3)—
 - (a) on the chief executive's application; or
 - (b) on its own initiative.
- (5) 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.
- (6) This section does not apply to an offence against section 202(6), 211(1) or 219(1).

228 Power of court for particular offences

- (1) A court may, in addition to any other penalty it may impose on a person convicted of an offence against section 202(6), 211(1) or 219(1), order that—
 - (a) if the person is a licensee or a real estate salesperson—the licensee's licence or real estate salesperson's registration certificate be suspended for a stated period or cancelled; or
 - (b) whether or not the person is a licensee or a real estate salesperson—the person be disqualified from holding a licence or registration certificate for a stated period or permanently.
- (2) If the court orders the cancellation of a person's licence or registration certificate—

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- (a) for an individual, the court must also order the person be disqualified, for a stated period or permanently, from holding a licence or registration certificate; or
 - (b) otherwise, the court may also order the person be disqualified, for a stated period or permanently, from holding a licence or registration certificate.
- (3) The court may also make any other order QCAT may make in a marketeer proceeding.

Note—

For the orders QCAT may make, see section 188.

- (4) However, if the court makes an order that the person pay to another person who has suffered financial loss an amount for compensation, the court may order the payment of an amount of not more than the limit of the court's civil jurisdiction.
- (5) The court may make an order under this section—
- (a) on the chief executive's application; or
 - (b) on its own initiative.
- (6) If the order is made on the court's own initiative, the court must cause a copy of the order to be given to the chief executive.

229 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

230 **Public warnings**

- (1) The Minister or chief executive may make or issue a public statement identifying and giving warnings or information about the following—
 - (a) contraventions of a prescribed conduct provision that have resulted in disciplinary action being taken under this Act and the persons who have committed the contraventions;
 - (b) business practices regulated under this Act that are unfair and the persons who engage in the unfair practices;
 - (c) the commission of offences against this Act and the persons who commit the offences.
- (2) The statement may identify particular contraventions, business practices, 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.

231 **Civil remedies not affected**

Nothing in this Act affects or limits a civil remedy a person may have against a licensee or another person in relation to a matter.

232 **Criminal Proceeds Confiscation Act 2002 not limited**

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

233 Delegation—chief executive

The chief executive may delegate the chief executive's powers, other than the chief executive's power under section 230, to an appropriately qualified public service employee.

234 Approved forms

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

235 Regulation may prescribe conduct standards

- (1) A regulation may provide for conduct standards for the following—
 - (a) auctioneers in carrying on auctioneering practice;
 - (b) real estate agents or real estate salespersons in carrying on real estate agency practice;
 - (c) resident letting agents in carrying on resident letting agency practice.
- (2) A provision of a regulation mentioned in subsection (1) is a *prescribed conduct provision*.

Note—

A contravention of a prescribed conduct provision is a ground for starting disciplinary action. See section 172.

236 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may provide for—
 - (a) fees, including the refunding of fees and the discounts for persons applying for more than 1 licence under this Act, the Agents Acts, or both;

- (b) imposing penalties of not more than 20 penalty units for contraventions of regulations;
- (c) imposing limits on out-of-pocket expenses incurred in the performance of activities under licences;
- (d) the keeping of records under this Act, including the form in which records are to be kept;
- (e) the keeping of receipts and evidence of expenditure by licensees;
- (f) the length of time documents required to be kept under this Act are to be kept.

Part 13 Repeal

237 Repeal

The Property Agents and Motor Dealers Act 2000, No. 62 is repealed.

Part 14 Transitional provisions

Division 1 Preliminary

238 Definitions for pt 14

In this part—

chattel auctioneer licence means a chattel auctioneer licence under the Motor Dealers and Chattel Auctioneers Act.

commencement means the day this section commences.

debt collector licence means a licence under the Debt Collectors Act.

Debt Collectors Act means the *Debt Collectors (Field Agents and Collection Agents) Act 2014*.

debt collector subagent registration certificate means a registration certificate under the Debt Collectors Act.

existing licence means a licence issued under PAMDA, other than a property developer's licence or property developer director's licence, that is in force, or suspended or deactivated, immediately before the commencement.

existing registration certificate means a registration certificate issued under PAMDA and in force, or suspended, immediately before the commencement.

motor dealer licence means a motor dealer licence under the Motor Dealers and Chattel Auctioneers Act.

Motor Dealers and Chattel Auctioneers Act means the *Motor Dealers and Chattel Auctioneers Act 2014*.

motor salesperson registration certificate means a registration certificate under the Motor Dealers and Chattel Auctioneers Act.

property licence means a licence under this Act.

property registration certificate means a registration certificate under this Act.

relevant Act means—

- (a) for a chattel auctioneer licence, motor dealer licence or motor salesperson registration certificate—the Motor Dealers and Chattel Auctioneers Act; or
- (b) for a debt collector licence, debt collector subagent registration certificate or registration as a subagent under the Debt Collectors Act—the Debt Collectors Act; or
- (c) for a property licence or property registration certificate—this Act.

repealed code of conduct means a code of conduct under PAMDA.

transitioned certificate—

- (a) generally—see section 240(2); and
- (b) if the transitioned certificate under section 240(2) is a debt collector subagent registration certificate—see also section 240(3).

transitioned licence see sections 239(2) and 240(2).

Division 2 Provisions for licences and registration certificates

Subdivision 1 Licences and registration certificates in force under PAMDA

239 Existing licences

- (1) This section applies to a person who immediately before the commencement held an existing licence.
- (2) If the person is the holder of an existing licence of a kind mentioned in column 1 of the following table, the person is taken to be the holder of the licence or licences (each a *transitioned licence*) mentioned in column 2 of the table.

Licence under PAMDA	Licence after commencement
resident letting agent's licence	resident letting agent licence
real estate agent's licence	real estate agent licence
pastoral house licence	auctioneer licence
	chattel auctioneer licence
	real estate agent licence
pastoral house director's licence	real estate agent licence

Licence under PAMDA	Licence after commencement
pastoral house manager's licence	real estate agent licence
pastoral house auctioneer's licence	auctioneer licence chattel auctioneer licence
auctioneer's licence	auctioneer licence chattel auctioneer licence
motor dealer's licence	motor dealer licence
commercial agent's licence	debt collector licence

240 Existing registration certificates

- (1) This section applies to a person who immediately before the commencement held an existing registration certificate.
- (2) If the person is the holder of an existing registration certificate of a kind mentioned in column 1 of the following table, the person is taken to be the holder of the registration certificate (*transitioned certificate*), and any licence or licences (each a *transitioned licence*), mentioned in column 2 of the table.

Registration certificate under PAMDA	Registration certificate or licence after commencement
registration certificate as a real estate salesperson	registration certificate as a real estate salesperson
registration certificate as a pastoral house salesperson	auctioneer licence chattel auctioneer licence registration certificate as a real estate salesperson
registration certificate as a trainee auctioneer	auctioneer licence chattel auctioneer licence
registration certificate as a property developer salesperson	registration certificate as a real estate salesperson

Registration certificate under PAMDA	Registration certificate or licence after commencement
registration certificate as a motor salesperson	motor salesperson registration certificate
registration certificate as a commercial subagent	debt collector subagent registration certificate

- (3) If the transitioned certificate under subsection (2) is a debt collector subagent registration certificate, a reference to the transitioned certificate in this part includes, if the context permits, a reference to registration as a subagent under the Debt Collectors Act.

241 Existing applications about renewal or amendment of existing licences or registration certificates, or about appointment of substitute licensees

- (1) This section applies if—
- (a) any of the following applications were made under PAMDA and not decided before the commencement—
 - (i) an application for the renewal of a licence or registration certificate;
 - (ii) an application to amend the licence conditions of a licence or registration certificate;
 - (iii) an application about appointing a nominated person mentioned in PAMDA, section 64(3) or 65(4) as a licensee’s substitute licensee; and
 - (b) the licence or registration certificate in relation to which the application was made is a transitioned licence or licences or transitioned certificate under section 239(2) or 240(2).
- (2) The application is taken to be an application under the relevant Act for the transitioned licence or licences or transitioned certificate.
- (3) The application, and any review or appeal in relation to the application, must be decided under the relevant Act.

242 Existing requests to deactivate existing licence

- (1) This section applies if—
 - (a) a request to deactivate a licence was made under PAMDA and not decided before the commencement; and
 - (b) the licence in relation to which the request was made is a transitioned licence or licences under section 239(2).
- (2) The request is taken to be a request under the relevant Act for the transitioned licence or licences.
- (3) The request, and any review or appeal in relation to the request, must be decided under the relevant Act.

243 Transitioned licences and certificates subject to previous conditions

- (1) If, immediately before the commencement, an existing licence was subject to a condition, the condition continues to apply, so far as practicable and with necessary changes, to each transitioned licence for the existing licence.
- (2) If, immediately before the commencement, an existing registration certificate was subject to a condition, the condition continues to apply, so far as practicable and with necessary changes, to the transitioned certificate or transitioned licence for the existing registration certificate.

244 Transitioned licences and certificates subject to previous suspension

- (1) If, immediately before the commencement, an existing licence was suspended—
 - (a) each transitioned licence for the existing licence continues to be suspended under the relevant Act for the transitioned licence; and
 - (b) the terms of the suspension continue to apply, so far as practicable and with necessary changes, to the transitioned licence.

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- (2) If, immediately before the commencement, an existing registration certificate was suspended—
- (a) each transitioned certificate or transitioned licence for the existing registration certificate continues to be suspended under the relevant Act for the transitioned certificate or transitioned licence; and
 - (b) the terms of the suspension continue to apply, so far as practicable and with necessary changes, to the transitioned certificate or transitioned licence.

245 Transitioned licences that are deactivated

- (1) This section applies if—
- (a) a licence was deactivated under PAMDA immediately before the commencement; and
 - (b) the licence is a transitioned licence or licences under section 239(2).
- (2) The deactivation continues in force under the relevant Act for the transitioned licence or licences.
- (3) A person may ask the chief executive to reactivate the transitioned licence or licences under the relevant Act.

246 Ending of transitioned licences and certificates

- (1) A transitioned licence or transitioned certificate ends on the earlier of the following days—
- (a) the day the licence or certificate would have ended if PAMDA had not been repealed;
 - (b) the day it is cancelled or surrendered under the relevant Act for the transitioned licence or transitioned certificate.
- (2) However, a transitioned licence, that is an auctioneer licence or chattel auctioneer licence, for a registration certificate as a trainee auctioneer—
- (a) expires on the earlier of the following days—

- (i) the day that is 1 year after the commencement;
 - (ii) the day it is cancelled or surrendered under the relevant Act for the licence; and
 - (b) can not be renewed.
- (3) Subsection (2) applies despite any other provision of this part.

247 Transitioned licences or certificates may be dealt with under relevant Act

A transitioned licence or transitioned certificate may be dealt with under the relevant Act for the licence or certificate as if it were a licence or registration certificate issued under the relevant Act.

Example of dealing with a transitioned licence or transitioned certificate—

amending the conditions of the transitioned licence or transitioned certificate

248 Conditions and limitations on particular transitioned licences

- (1) This section applies to an auctioneer licence or chattel auctioneer licence that is the transitioned licence for an existing registration certificate as a pastoral house salesperson or trainee auctioneer.
- (2) The chief executive may impose the conditions on the licence the chief executive considers necessary for the proper performance of the activities authorised by the licence.
- (3) If the chief executive decides to impose a condition on the licence, the chief executive must give the licensee an information notice about the decision within 14 days after the decision is made.
- (4) The licensee can not be a principal licensee under the relevant Act in relation to the licence.

249 Existing appointments to act as agent

- (1) An existing appointment mentioned in column 1 of the following table continues in force after the commencement as an appointment mentioned in column 2 of the following table—

Appointment under PAMDA	Appointment after commencement
appointment to act as a resident letting agent	appointment under this Act to act as a resident letting agent
appointment to act as a real estate agent	appointment under this Act to act as a real estate agent
appointment to act as a pastoral house	if the appointment relates to auctioning or sale of real property—appointment under this Act to act as a property agent if the appointment relates to auctioning goods—appointment under the Motor Dealers and Chattel Auctioneers Act to act as a chattel auctioneer of the goods
appointment to act as a pastoral house director or pastoral house manager	appointment under this Act to act as a real estate agent
appointment to act as an auctioneer or pastoral house auctioneer	if the appointment relates to auctioning real property—appointment under this Act to act as an auctioneer of the property if the appointment relates to auctioning chattels—appointment under the Motor Dealers and Chattel Auctioneers Act to act as a chattel auctioneer of the chattels
appointment to act as a motor dealer	appointment under the Motor Dealers and Chattel Auctioneers Act to act as a motor dealer

Appointment under PAMDA

appointment to act as a commercial agent

Appointment after commencement

appointment under the Debt Collectors Act to act as a debt collector

- (2) An existing appointment continued in force under this section ends—
 - (a) if the appointment continues as an appointment under this Act to act as a property agent and is for an exclusive agency, or sole agency, within the meaning of PAMDA—on the earlier of the following—
 - (i) the day it ends according to its terms;
 - (ii) the end of 60 days after the appointment is made;or
 - (b) otherwise—on the day it ends according to its terms.
- (3) An appointment continued in force under this section continues, subject to this section, according to its terms with necessary changes.
- (4) In this section—

existing appointment, to act as a particular agent, means a valid appointment made under PAMDA to act as a particular agent that was in force immediately before the commencement.

250 Existing appointments as substitute licensees

- (1) This section applies if—
 - (a) the chief executive appointed a nominated person under section 64(3) or 65(4) of PAMDA as a licensee's substitute licensee; and
 - (b) the appointment was in force immediately before the commencement; and
 - (c) the licence in relation to which the appointment was made is a transitioned licence or licences under section 239(2).

- (2) The appointment continues under the relevant Act for the transitioned licence or licences as an appointment made for the holder of the transitioned licence or licences.
- (3) An appointment continued in force under this section continues, subject to this section, according to its terms with necessary changes.

251 Chief executive may accept PAMDA forms

- (1) Instead of an approved form under an Agents Act, the chief executive may accept—
 - (a) for an application relating to a transitioned licence—the PAMDA form for the corresponding application for the existing licence to which the transitioned licence relates; or
 - (b) for an application relating to a transitioned certificate—the PAMDA form for the corresponding application for the existing registration certificate to which the transitioned certificate relates.
- (2) In this section—

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

Subdivision 2 Other provisions

252 Ending of particular licences

To remove any doubt, it is declared that, on the repeal of PAMDA, the following licences issued under that Act, and any applications for the licences made under that Act, ended—

- (a) property developer’s licence;
- (b) property developer director’s licence.

253 Existing applications for the issue of a licence or registration certificate

- (1) This section applies to an application for the issue of a licence or registration certificate made under PAMDA but not decided before the commencement.
- (2) An application for a licence or registration certificate under PAMDA mentioned in column 1 of the following table is taken to be an application under the relevant Act for the licence or licences or registration mentioned in column 2 of the table.

Application under PAMDA	Application under relevant Act
resident letting agent's licence	resident letting agent licence
real estate agent's licence	real estate agent licence
pastoral house licence	auctioneer licence chattel auctioneer licence real estate agent licence
pastoral house director's licence	real estate agent licence
pastoral house manager's licence	real estate agent licence
pastoral house auctioneer's licence	auctioneer licence chattel auctioneer licence
auctioneer's licence	auctioneer licence chattel auctioneer licence
motor dealer's licence	motor dealer licence
commercial agent's licence	debt collector licence
registration certificate as a real estate salesperson	registration as a real estate salesperson under this Act

Application under PAMDA	Application under relevant Act
registration certificate as a pastoral house salesperson	auctioneer licence chattel auctioneer licence registration as a real estate salesperson under this Act
registration certificate as a trainee auctioneer	auctioneer licence chattel auctioneer licence
registration certificate as a property developer salesperson	registration as a real estate salesperson under this Act
registration certificate as a motor salesperson	registration as a motor salesperson under the Motor Dealers and Chattel Auctioneers Act
registration certificate as a commercial subagent	registration as a subagent under the Debt Collectors Act

- (3) The application, and any review or appeal in relation to the application, must be decided under the relevant Act.

254 Existing applications for restoration of expired licences or registration certificates

- (1) This section applies if—
- (a) a person's licence or registration certificate under PAMDA expired before the commencement; and
 - (b) the person applied for the restoration of the licence or registration certificate under PAMDA before the commencement; and
 - (c) the application was not decided before the commencement.
- (2) The application is taken to be an application under the relevant Act for the restoration of the following (the *relevant authority*)—

- (a) for an expired licence—the licence or licences that the expired licence would have become under section 239 if it had still been in force immediately before the commencement;
 - (b) for an expired registration certificate other than a registration certificate as a commercial agent—the registration certificate or licence or licences that the expired registration certificate would have become under section 240 if it had still been in force immediately before the commencement;
 - (c) for an expired registration certificate as a commercial agent—registration as a subagent under the Debt Collectors Act.
- (3) For the purposes of—
- (a) deciding the application; and
 - (b) restoring the expired licence or registration certificate; and
 - (c) any review or appeal in relation to the application;
- the expired licence or registration certificate is taken to be the relevant authority.
- (4) The expired licence or registration certificate is taken to continue in force, as the relevant authority, until the application is—
- (a) decided under the relevant Act; or
 - (b) withdrawn under the relevant Act.
- (5) To remove any doubt, it is declared that if the application is granted, the restoration must be given effect as if the expired licence or registration certificate were the relevant authority.

255 Applications for restoration of expired licences or registration certificates not made before commencement

- (1) This section applies if—

- (a) a person's licence or registration certificate under PAMDA expired before the commencement; and
 - (b) the person did not apply for the restoration of the licence or certificate before the commencement; and
 - (c) 3 months have not passed from the day the licence or certificate expired.
- (2) The person may apply for the restoration of the expired licence or registration certificate under the relevant Act as if the expired licence or registration certificate were the following (the *relevant authority*)—
- (a) for an expired licence—the licence or licences that the expired licence would have become under section 239 if it had still been in force immediately before the commencement;
 - (b) for an expired registration certificate other than a registration certificate as a commercial agent—the registration certificate or licence or licences that the expired registration certificate would have become under section 240 if it had still been in force immediately before the commencement;
 - (c) for an expired registration certificate as a commercial agent—registration as a subagent under the Debt Collectors Act.
- (3) For the purposes of—
- (a) the application; and
 - (b) deciding the application; and
 - (c) restoring the expired licence or registration certificate; and
 - (d) any review or appeal in relation to the application;
- the expired licence or registration certificate is taken to be the relevant authority.
- (4) If an application for the restoration of the expired licence or registration certificate is made under the relevant Act, the

licence or registration certificate is taken to continue in force, as the relevant authority, until the application is—

- (a) decided under the relevant Act; or
 - (b) withdrawn under the relevant Act.
- (5) To remove any doubt, it is declared that if the application is granted, the restoration must be given effect as if the expired licence or registration certificate were the relevant authority.

256 Effect of previous refusals of applications

- (1) This section applies to a person who made an application for a licence or registration certificate under PAMDA that was refused before the commencement.
- (2) The person can not make an application for a licence or registration under the Motor Dealers and Chattel Auctioneers Act, Debt Collectors Act or this Act—
 - (a) for 3 months after the day the chief executive gave the person an information notice for the refusal under PAMDA; or
 - (b) if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed—for 3 months after the day the decision is confirmed.
- (3) This section does not apply to a person if—
 - (a) the person is a corporation; and
 - (b) the person satisfies the chief executive that, because of a genuine sale—
 - (i) no person who was a shareholder of, or held a beneficial interest in, the corporation when the refused application was made is a shareholder of, or holds a beneficial interest in, the corporation; and
 - (ii) no person who was in a position to control or influence the affairs of the corporation when the

refused application was made is in a position to control or influence the affairs of the corporation.

257 Continuation of reviews under PAMDA

- (1) Subsection (2) applies if—
 - (a) a person applied to QCAT, under PAMDA, section 501, for a review of a decision of the chief executive; and
 - (b) the review had not been decided before the commencement.
- (2) QCAT may hear, or continue to hear, and decide the review under PAMDA as if it had not been repealed.
- (3) Subsections (4) and (5) apply if—
 - (a) a person could have applied, under PAMDA, section 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 PAMDA, and QCAT may hear and decide the review under PAMDA, as if PAMDA had not been repealed.
- (5) Subsection (6) applies if—
 - (a) the review relates to a licence other than a transitioned licence, or a registration certificate other than a transitioned certificate; and
 - (b) the effect of the review is that a licence or registration certificate must be granted or restored.
- (6) The grant or restoration must be given effect in relation to—
 - (a) if the review relates to a licence or a registration certificate other than a registration certificate as a commercial subagent—the licence or licences or registration certificate mentioned in the table in section 239(2) or 240(2) opposite the licence or registration certificate; or

- (b) if the review relates to a registration certificate as a commercial agent—registration as a subagent under the Debt Collectors Act.

Division 3 Provisions about pre-commencement conduct

258 Disciplinary action relating to pre-commencement conduct

- (1) Subsection (2) applies if, before the commencement, a ground existed for starting disciplinary action under PAMDA against a former licensee or former registered employee.
- (2) Prescribed action may be taken against the former licensee or former registered employee on that ground under the relevant Act as if the ground were a ground for starting a proceeding for the prescribed action under the relevant Act.
- (3) If, before the commencement, QCAT had started but not finished disciplinary action under PAMDA, the action may be finished under PAMDA as if that Act had not been repealed.
- (4) If the decision under subsection (3) applies to a licence or registration certificate under PAMDA that is a transitioned licence or licences or transitioned certificate, the decision must be given effect under the relevant Act in relation to the transitioned licence or licences or transitioned certificate.
- (5) In this section—

former licensee means a person who held a licence under PAMDA at any time within 3 years before a proceeding is started under subsection (2).

former registered employee means a person who held a registration certificate under PAMDA at any time within 1 year before a proceeding is started under subsection (2).

prescribed action means—

- (a) for the Debt Collectors Act—making an order under section 116 of that Act; or

(b) otherwise—disciplinary action.

relevant Act, for a licence or registration certificate under PAMDA that is not a transitioned licence, means the relevant Act for the licence or licences or registration certificate that the licence or certificate would have become under section 239(2) or 240(2) if it had still been in force immediately before the commencement.

259 Injunctions relating to pre-commencement conduct

- (1) An existing injunction continues to be a valid injunction under the relevant Act according to its terms.
- (2) The provisions of the relevant Act relating to injunctions apply to an existing injunction.
- (3) If an existing injunction relates to a person's existing licence, the injunction is taken to relate to the person's transitioned licence.
- (4) If an existing injunction relates to a person's existing registration certificate, the injunction is taken to relate to the person's transitioned licence or licences or transitioned certificate.
- (5) The District Court may grant an injunction under a relevant Act, in addition to any other power to grant injunctions under the relevant Act, if the court is satisfied—
 - (a) a person has, before the commencement, engaged in conduct that constituted—
 - (i) a contravention of PAMDA or a repealed code of conduct; or
 - (ii) an attempt to contravene PAMDA or a repealed code of conduct; or
 - (iii) aiding, abetting, counselling or procuring a person to contravene PAMDA or a repealed code of conduct; or
 - (iv) inducing or attempting to induce, whether by threats, promises or otherwise, a person to

- contravene PAMDA or a repealed code of conduct;
or
 - (v) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of PAMDA or a repealed code of conduct;
or
 - (vi) conspiring with others to contravene PAMDA or a repealed code of conduct; and
 - (b) the conduct would result in the grant of an injunction under the relevant Act if the conduct had happened after the commencement in relation to the relevant Act.
- (6) An application under subsection (5) may be made by—
- (a) the chief executive; or
 - (b) a person aggrieved by the respondent’s conduct.
- (7) If, before the commencement—
- (a) the chief executive applied to the District Court for an injunction under PAMDA, section 564; and
 - (b) the District Court has not decided the application;
- the application may be heard and decided under PAMDA as if it had not been repealed.
- (8) In this section—
- existing injunction*** means an injunction granted by the District Court under PAMDA and in force immediately before the commencement.
- relevant Act*** means—
- (a) for an injunction relating to conduct, or conduct, of a kind regulated by the Debt Collectors Act—the Debt Collectors Act; or
 - (b) for an injunction relating to conduct, or conduct, of a kind regulated by the Motor Dealers and Chattel Auctioneers Act—the Motor Dealers and Chattel Auctioneers Act; or

-
- (c) for an injunction relating to conduct, or conduct, of a kind regulated by this Act—this Act.

260 Undertakings relating to pre-commencement conduct

- (1) An existing undertaking continues to be a valid undertaking under the relevant Act according to its terms.
- (2) The provisions of the relevant Act relating to undertakings apply to an existing undertaking.
- (3) If an existing undertaking relates to a person's existing licence, the undertaking is taken to relate to the person's transitioned licence.
- (4) If an existing undertaking relates to a person's existing registration certificate, the undertaking is taken to relate to the person's transitioned licence or licences or transitioned certificate.
- (5) If the chief executive reasonably believes a person has, before the commencement, contravened or been involved in a contravention of PAMDA or a repealed code of conduct, the chief executive may ask for an undertaking under the relevant Act as if—
 - (a) a reference to 'this Act' in the provisions of the relevant Act about undertakings were a reference to PAMDA; and
 - (b) a reference to a 'prescribed conduct provision' in the provisions of the relevant Act about undertakings were a reference to the repealed code of conduct.
- (6) If, before the commencement—
 - (a) the chief executive applied to the District Court for an order under PAMDA, section 571; and
 - (b) the District Court has not decided the application;the application may be heard and decided under PAMDA as if it had not been repealed.
- (7) In this section—

existing undertaking means an undertaking given by a person under PAMDA and in force immediately before the commencement.

relevant Act means—

- (a) for an undertaking relating to conduct, or conduct, of a kind regulated by the Debt Collectors Act—the Debt Collectors Act; or
- (b) for an undertaking relating to conduct, or conduct, of a kind regulated by the Motor Dealers and Chattel Auctioneers Act—the Motor Dealers and Chattel Auctioneers Act; or
- (c) for an undertaking relating to conduct, or conduct, of a kind regulated by this Act—this Act.

261 Proceedings for offences under PAMDA

- (1) This section applies if a person is alleged to have committed an offence against PAMDA before the commencement.
- (2) Without limiting the *Acts Interpretation Act 1954*, section 20, proceedings for the offence may be started or continued, and a court may hear and decide the proceedings under PAMDA, as if it had not been repealed.
- (3) Subsection (2) applies despite the Criminal Code, section 11.

262 Existing infringement notice offences

- (1) This section applies if—
 - (a) an infringement notice offence under the *State Penalties Enforcement Act 1999* was committed against PAMDA by a person before the commencement; and
 - (b) no infringement notice under the *State Penalties Enforcement Act 1999* had been served before the commencement on the person for the offence.
- (2) Without limiting the *Acts Interpretation Act 1954*, section 20, an infringement notice may be served on the person, and the

infringement notice may be dealt with, as if PAMDA had not been repealed.

263 Existing fines and fees

- (1) A fine ordered to be paid to the chief executive under PAMDA that has not been paid before the commencement may be recovered after the commencement as a debt owing to the chief executive in a court with jurisdiction to recover debts up to the amount of the fine.
- (2) A fee incurred under PAMDA that has not been paid before the commencement may be recovered after the commencement as a debt owing to the chief executive in a court with jurisdiction to recover debts up to the amount of the fee.

264 Return of beneficial interest if in form of commission

If proceedings for an offence against a provision mentioned in column 1 of the following table are started or continued under section 261, and the proceedings result in a person being convicted of an offence, the provision mentioned in column 2 of the following table applies to the person and the court convicting the person as if PAMDA had not been repealed—

Offence provision	Provision providing for return of beneficial interest
PAMDA, section 145(2) or (3)	PAMDA, section 145A
PAMDA, section 184(2) or (3)	PAMDA, section 184A
PAMDA, section 222(2) or (3)	PAMDA, section 222A
PAMDA, section 292(2) or (3)	PAMDA, section 292A

265 Marketeer proceeding relating to pre-commencement conduct

- (1) If, before the commencement, a ground existed for starting a marketeer proceeding against a person under PAMDA, a marketeer proceeding may be taken against the person on that ground under PAMDA as if it had not been repealed.
- (2) If, before the commencement, QCAT had started but not finished a marketeer proceeding under PAMDA, the marketeer proceeding may be finished under PAMDA as if it had not been repealed.

Division 4 Preservation of existing rights of buyers

266 Buyer's rights if notice about land not given or materially defective continue

PAMDA, sections 150, 189 and 227 continue to apply to a contract for the sale of land entered into before the commencement as if PAMDA had not been repealed.

267 PAMDA, ch 11 continues to apply to existing relevant contracts

- (1) This section applies to a relevant contract as defined under PAMDA, section 364 entered into before the commencement that has not settled.
- (2) PAMDA, chapter 11 continues to apply to the relevant contract as if PAMDA had not been repealed.

268 Statutory warranty for used motor vehicles sold by pre-commencement auctioneers

- (1) This section applies if—
 - (a) before the commencement, a pre-commencement auctioneer sold a warranted vehicle as mentioned in

PAMDA, section 237(1) and not as mentioned in PAMDA, section 237(2); and

- (b) on the commencement, the warranty period under PAMDA, section 236 for the vehicle had not ended.
- (2) The relevant warranty provisions continue to apply in relation to the warranted vehicle as if PAMDA had not been repealed.
- (3) In this section—

pre-commencement auctioneer means an auctioneer under PAMDA, schedule 2.

relevant warranty provisions means—

- (a) PAMDA, sections 242 to 249; and
- (b) any other provisions of PAMDA relevant to the interpretation of the provisions mentioned in paragraph (a).

warranted vehicle means a class A warranted vehicle, or a class B warranted vehicle, under PAMDA, schedule 2.

269 Statutory warranty for used motor vehicles sold by pre-commencement motor dealer

- (1) This section applies if—
 - (a) before the commencement, a pre-commencement motor dealer sold a warranted vehicle as mentioned in PAMDA, section 315(1) and not as mentioned in PAMDA, section 315(2); and
 - (b) on the commencement, the warranty period under PAMDA, section 314 for the vehicle had not ended.
- (2) The relevant warranty provisions continue to apply in relation to the warranted vehicle as if PAMDA had not been repealed.
- (3) In this section—

pre-commencement motor dealer means a motor dealer under PAMDA, schedule 2.

relevant warranty provisions means—

[s 270]

- (a) PAMDA, sections 318 to 325; and
- (b) any other provisions of PAMDA relevant to the interpretation of the provisions mentioned in paragraph (a).

warranted vehicle means—

- (a) a class A warranted vehicle, or a class B warranted vehicle, under PAMDA, schedule 2; or
- (b) a restorable vehicle under PAMDA, schedule 2 for which the buyer did not waive the statutory warranty under PAMDA, section 316A(2).

Division 5 Other provisions

270 Existing reference committee

- (1) A community representative whose appointment to a reference committee under PAMDA, section 528AA was current immediately before the commencement continues to hold the appointment as a community representative under this Act for the unexpired term of the appointment.
- (2) If the appointment was subject to a condition, the person's appointment continues to be subject to the condition.
- (3) If, under PAMDA, section 528AC, the reference committee has authorised the chief executive to make an application to QCAT for a public examination under PAMDA, chapter 14, part 5, division 8, the authorisation continues to be effective for this Act.

271 Existing registers

A person may inspect or get a copy of details in any of the following kept under PAMDA to the same extent, and on payment of any fee, that would apply if PAMDA had not been repealed—

- (a) the licence register;

- (b) the registration certificate register;
- (c) the register of undertakings.

272 Refund of fees paid under PAMDA

A regulation under this Act or an Agents Act may provide for the refunding of fees paid under PAMDA.

Schedule 1 Decisions subject to review

section 176

- section 36(2) Chief executive must consider suitability of applicants and licensees
- section 50(1) Chief executive may issue or refuse to issue licence
- section 54(1) Licence—conditions
- section 59(1) Chief executive may renew or refuse to renew licence
- section 63(1) Chief executive may restore or refuse to restore licence
- section 68(1) Chief executive may appoint or refuse to appoint substitute licensee
- section 71(1) Amendment of licence conditions
- section 76(2) Immediate suspension
- section 121(2) Chief executive must consider suitability of applicants
- section 128(1) Chief executive may issue or refuse to issue registration certificate
- section 129(1) Registration certificate—conditions
- section 131(1) Chief executive may renew or refuse to renew registration certificate
- section 135(1) Chief executive may restore or refuse to restore registration certificate
- section 138(1) Amendment of registration certificate conditions
- section 142(2) Immediate suspension

Schedule 2 Dictionary

section 13

Administration Act means the *Agents Financial Administration Act 2014*.

Agents Act means—

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

approved form see section 234.

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

associate, of a person, means—

- (a) a property agent who acts, for a sale of property, in conjunction with a property agent appointed for section 102 to sell the property; or
- (b) a spouse, parent, brother, sister or child of the person; or

Note—

A reference to a spouse includes a de facto partner. For definitions of *spouse* and *de facto partner*, see the *Acts Interpretation Act 1954*, section 32DA and schedule 1.

- (c) a child of the person's spouse.

auctioneer see section 14.

auctioneer licence means an auctioneer licence issued under section 50.

audit period see the Administration Act, section 33.

audit report see the Administration Act, section 33.

beneficial interest see section 153.

body corporate means—

- (a) a body corporate under the *Building Units and Group Titles Act 1980*; or
- (b) a body corporate for a leasehold building units plan under the *South Bank Corporation Act 1989*; or
- (c) a body corporate under the *Body Corporate and Community Management Act 1997*; or
- (d) a community body corporate under the *Mixed Use Development Act 1993*.

building complex means—

- (a) a building on a single building units plan under the *Building Units and Group Titles Act 1980*; or
- (b) a building or buildings on a single group titles plan under the *Building Units and Group Titles Act 1980*; or
- (c) a building or buildings shown on a single leasehold building units plan under the *South Bank Corporation Act 1989*; or
- (d) a building or buildings on scheme land in a single community titles scheme or a layered arrangement of community title schemes under the *Body Corporate and Community Management Act 1997*; or
- (e) a building on the site for a mixed use scheme under the *Mixed Use Development Act 1993*.

business address, of a licensee, see section 31(1)(b).

business associate, of an applicant for a licence or a licensee, means a person with whom the applicant or licensee intends to carry on, or carries on, business under a licence.

buyer, for part 7, see section 159.

chattel auctioneer licence, for part 14, see section 238.

civil jurisdiction, for an amount that is the limit of a court's civil jurisdiction, means an amount equal to the maximum amount that may be claimed in a personal action in the civil jurisdiction of the court.

client, for part 4, see section 102(1) or (3).

commencement, for part 14, see section 238.

commercial scale appointment, for appointment of a property agent to sell residential property under a sole or exclusive agency, means an appointment for the sale of—

- (a) 3 or more residential properties; or
- (b) a lot in a community titles scheme as part of the sale of management rights to the person who is to become the letting agent for the community titles scheme.

commissioner for fair trading means the commissioner for fair trading under the *Fair Trading Act 1989*.

community titles scheme see the *Body Corporate and Community Management Act 1997*, section 10.

comparable certificate, under PAMDA, means a certificate of registration as any of the following under that Act—

- (a) real estate agent salesperson;
- (b) pastoral house salesperson;
- (c) property developer salesperson;
- (d) trainee auctioneer.

comparable licence, under PAMDA—

- (a) for a property agent licence, means any of the following licences under that Act—
 - (i) real estate agent's licence;
 - (ii) pastoral house auctioneer's licence;
 - (iii) pastoral house licence;
 - (iv) pastoral house director's licence;
 - (v) pastoral house manager's licence;
 - (vi) auctioneer's licence; or
- (b) for a resident letting agent licence, means a resident letting agent licence under that Act.

comparative market analysis, for an offered property, means a document comparing the offered property with at least 3

properties sold within the previous 6 months that are of a similar standard or condition to the offered property and are within 5km of the offered property.

completes, a residential property sale, see section 18.

computer means a mechanical, electronic or other device for the processing of data.

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.

cooling-off period, for part 7, see section 166.

corresponding law means a law of another State or New Zealand that provides for the same matter as this Act or a provision of this Act.

criminal history, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than for a conviction—

- (a) to which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

criminal history costs requirement see—

- (a) generally, for an applicant or licensee—section 42(2); or
- (b) for an applicant for, or for the renewal or restoration of, registration as a real estate salesperson or a real estate salesperson—section 124(2).

debt collector licence, for part 14, see section 238.

Debt Collectors Act, for part 14, see section 238.

debt collector subagent registration certificate, for part 14, see section 238.

disciplinary proceeding means a disciplinary proceeding under section 173.

domestic building contract see the *Queensland Building and Construction Commission Act 1991*, schedule 1B, section 3.

electronic listings provider means an entity that lists real property for sale on a website or other electronic medium that is used by buyers to search for properties for sale.

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.

employed licensee means a licensee who performs the activities of a licensee as the employee of another person.

exclusive agency see section 23.

executive officer, of 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.

existing licence, for part 14, see section 238.

existing registration certificate, for part 14, see section 238.

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

former licensee means a person who held a licence under this Act or PAMDA.

former tribunal means the tribunal under the repealed *Commercial and Consumer Tribunal Act 2003*.

fund means the claim fund established under the Administration Act, section 78.

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

holder—

- (a) of a property agent licence that is in force, means the person in whose name the licence is issued; or
- (b) of a registration certificate that is in force, means the person in whose name the certificate is issued.

home see the *Queensland Building and Construction Commission Act 1991*, schedule 1B, section 9.

in charge see section 19.

information notice means a notice complying with the QCAT Act, section 157(2).

insolvent under administration means a person who is an insolvent under administration under the Corporations Act, section 9.

inspector means a person who holds office under the *Fair Trading Inspectors Act 2014* as an inspector for this Act.

labour hire provider means an entity that conducts a business that is or includes the supply of labour to others.

land includes—

- (a) a lot or proposed lot under the *Land Title Act 1994*; and
- (b) a lot shown on a leasehold building units plan registered or to be registered under the *South Bank Corporation Act 1989*; and
- (c) land under the *South Bank Corporation Act 1989*; and
- (d) an interest in land.

lawyer means a lawyer who, under the *Legal Profession Act 2007*, may engage in legal practice in this State.

letting includes every form of leasing or letting of places of residence, land, estates, or businesses.

letting agent, for a community titles scheme, see the *Body Corporate and Community Management Act 1997*, section 16.

licence means a property agent licence or a resident letting agent licence.

licence register see section 82(1).

licensed, for a person, means licensed under this Act.

licensee—

- (a) generally, means the holder of a property agent licence, or a resident letting agent licence, that is in force; or
- (b) for part 9, see section 170.

listed, for part 7, see section 159.

management rights see the *Body Corporate and Community Management Act 1997*, schedule 6.

market, residential property, means take action to sell the property, other than by appointing a property agent to sell the property.

marketeer—

- (a) means a person directly or indirectly involved, alone or with others, in the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property under a formal or informal arrangement, and whether or not—
 - (i) the person derives a direct or indirect benefit from the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property; or
 - (ii) the way the property is marketed includes offering potential buyers of the property inducements intended to encourage the potential buyers to purchase the property; or
 - (iii) any of the persons is a licensee or a real estate salesperson; or
 - (iv) the sale, or promotion of the sale, or provision of a service in connection with the sale, of property is, or is part of, a business the person ordinarily conducts; and
- (b) includes a person who—

- (i) causes or arranges for the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property; or
- (ii) provides advisory, management, legal, accounting, administrative or other services in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property.

marketeer proceeding see section 174.

misleading includes deceptive.

money penalty see section 203.

motor dealer licence, for part 14, see section 238.

Motor Dealers and Chattel Auctioneers Act, for part 14, see section 238.

motor salesperson registration certificate, for part 14, see section 238.

obtain, for part 6, see section 152.

official means—

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

open listing see section 20.

option to purchase includes a right granted or purportedly granted, but not immediately exercisable, to purchase or to be given an option to purchase.

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

part payment see section 161(1)(b).

place of residence—

- (a) means—
 - (i) a building or part of a building used, or currently designed for use, as a single dwelling only; and

- (ii) outbuildings or other appurtenances incidental to the use of the building or part as a single dwelling; but
- (b) does not include—
- (i) a building or part of a building used, or currently designed for use, for temporary accommodation; or
- (ii) outbuildings or other appurtenances incidental to the use of the building or part as temporary accommodation.

Examples for paragraph (b)—

- motel
- caravan park
- hostel

prescribed conduct provision see section 235.

principal licensee means a licensee who carries on business under the licensee's licence on the licensee's own behalf.

property agent see section 15.

property agent licence means an auctioneer licence or a real estate agent licence.

property developer means a person who—

- (a) completes more than 6 residential property sales in a 12 month period; and
- (b) markets residential property in which the person has an interest of at least 15%.

property information session means a presentation (however described) given to 1 or more persons that has as a significant purpose the purchase of residential property in Queensland by 1 or more persons attending the presentation.

property licence, for part 14, see section 238.

property registration certificate, for part 14, see section 238.

provider see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

public examination means a public examination conducted under part 9, division 5, subdivision 2.

real estate agent see section 16.

real estate agent licence means a real estate agent licence issued under section 50.

real estate salesperson—

- (a) generally, means the holder of a registration certificate that is in force; or
- (b) for part 9, see section 170.

reference committee means the reference committee established under section 179.

registered bidder, for part 7, see section 159.

registered business name means a business name registered under the *Business Names Registration Act 2011* (Cwlth).

registered office, of a property agent or resident letting agent, see section 93.

registrar means the principal registrar under the QCAT Act.

registration certificate means a certificate of registration as a real estate salesperson issued under section 128.

registration certificate register see section 148(1).

relevant Act, for part 14, see section 238.

relevant contract, for part 7, see section 160.

relevant person see section 67(1).

repealed code of conduct, for part 14, see section 238.

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

residential property see section 21.

resident letting agent see section 17.

resident letting agent licence means a resident letting agent licence issued under section 50.

respondent, for part 10, see section 191.

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

rooming accommodation see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

sale by auction means the sale of property in a way commonly known and understood to be by auction.

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.

seller, for part 7, see section 159.

serious offence means any of the following offences punishable by 3 or more years imprisonment—

- (a) an offence involving fraud or dishonesty;
- (b) an offence involving the trafficking of drugs;
- (c) an offence involving the use or threatened use of violence;
- (d) an offence of a sexual nature;
- (e) extortion;
- (f) arson;
- (g) unlawful stalking, intimidation, harassment or abuse.

service see section 102.

sole agency see section 23.

termination penalty, for part 7, see section 159.

transitioned certificate, for part 14, see section 238.

transitioned licence, for part 14, see section 238.

trust account means a trust account kept under the Administration Act, part 2.

unsolicited invitation see section 22.