



Motor Dealers and Chattel Auctioneers Act 2014

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Queensland

Motor Dealers and Chattel Auctioneers Act 2014

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Motor Dealers and Chattel Auctioneers Act 2014

An Act to provide comprehensively for the regulation of the activities, licensing and conduct of motor dealers and chattel auctioneers 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 *Motor Dealers and Chattel Auctioneers Act 2014*.

2 Commencement

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

3 Act binds all persons

- (1) This Act binds all persons, including the State, and, so far as the legislative power of Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State, the Commonwealth or any other State liable to be prosecuted for an offence.

4 Relationship with Fair Trading Inspectors Act 2014

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

Division 2 Exemptions

5 Financial institutions and trustee companies

- (1) Part 3 does 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.

6 Particular auctions

Part 4 does 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 animals; or
- (d) a sale of goods distrained for rent or arrears of rent; or
- (e) a sale by postal bids of stamps or coins; or
- (f) a sale conducted for a charity, a religious denomination, or an organisation formed for a community purpose, within the meaning of the *Collections Act 1966* (a **relevant entity**) if—
 - (i) the person conducting the sale does not receive from the relevant entity a reward for the person's services; and
 - (ii) amounts received from the sale are paid directly to an officer or employee of the relevant entity who is authorised by the relevant entity to receive and deal with the amounts; or
- (g) a sale conducted by or for Magic Millions Sales Pty Limited ACN 078 396 317 as part of the event known as the Gold Coast Horses in Training Sale if the sale is conducted by a person approved by the chief executive before the sale as a suitable person to conduct the sale; or
- (h) a sale of goods directly connected with a sale by auction of a place of residence or land performed by a property agent appointed under the *Property Occupations Act 2014*, part 4; or
- (i) an auction held by an officer under the *Forestry Act 1959* for that Act.

7 Administrators etc.

- (1) This section applies to the following persons (each an *appointee*)—
 - (a) a person appointed under the Corporations Act as an administrator of a corporation that is or was authorised under a licence or former licence to perform an activity;
 - (b) a person appointed under the Corporations Act as an administrator of a deed of company arrangement for a corporation that is or was authorised under a licence or former licence to perform an activity;
 - (c) a person appointed under the Corporations Act as a liquidator, or controller of property, of a corporation that is or was authorised under a licence or former licence to perform an activity;
 - (d) a person appointed under the Administration Act as a receiver of an entity that is or was authorised under a licence or former licence to perform an activity;
 - (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—the former licence immediately before it stopped being in force.
- (3) For subsection (2) the provisions are the following—
 - section 70
 - section 71
 - section 72
 - section 79
 - section 80

- part 3, division 3
- section 119
- section 124
- part 4, division 3
- section 148
- section 149.

(4) In this section—

former licence means—

- (a) a licence that was previously in force; or
- (b) a motor dealer's licence or former auctioneers licence under PAMDA.

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

Division 3 Object of Act

8 Main object

- (1) The main object of this Act is to provide a system for licensing and regulating persons as motor dealers and chattel auctioneers and for registering and regulating persons as motor salespersons that achieves an appropriate balance between—
 - (a) the need to regulate for the protection of consumers; and
 - (b) the need to promote freedom of enterprise in the market place.
- (2) The object is to be achieved mainly 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 motor dealer licence or chattel auctioneer 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 increased flexibility in enforcement measures through injunctions and undertakings; and
- (e) 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

9 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

10 Meaning of *beneficial interest*

- (1) For this Act, other than section 19(2)(a) or (4)(b)(i), 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, other than section 19(2)(a) or (4)(b)(i), a motor salesperson is taken to have a **beneficial interest** in property, for example, if—
- (a) the purchase of the property is made for the motor salesperson or an associate of the salesperson; or
 - (b) the motor salesperson or an associate of the salesperson has an option to purchase the property; or
 - (c) the purchase of the property is made for a corporation (having not more than 100 members) of which the motor salesperson or an associate of the salesperson is a member; or
 - (d) an option to purchase the property is held by a corporation (having not more than 100 members) of which the motor salesperson or an associate of the salesperson is a member; or
 - (e) the purchase of the property is made for a corporation of which the motor salesperson or an associate of the salesperson is an executive officer; or
 - (f) an option to purchase the property is held by a corporation of which the motor salesperson or an associate of the salesperson is an executive officer; or
 - (g) the purchase of the property is made for an executive officer of a corporation of which the motor salesperson or an associate of the salesperson is an executive officer; or
 - (h) an option to purchase the property is held by an executive officer of a corporation of which the motor salesperson or an associate of the salesperson is an executive officer; or
 - (i) the purchase of the property is made for a member of a firm or partnership of which the motor salesperson or an associate of the salesperson is also a member; or

- (j) the purchase of the property is made for a person carrying on a business for profit or gain and the motor salesperson or an associate of the salesperson has, directly or indirectly, a right to participate in the income or profits of the person's business or the purchase of the property.

11 Meaning of *in charge*

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

12 Meaning of *motor vehicle*

- (1) A *motor vehicle* means—

- (a) a vehicle that moves on wheels and is propelled by a motor that forms part of the vehicle, whether or not the vehicle is capable of being operated or used in a normal way; or
- (b) a caravan.

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

- (a) a hovercraft;
- (b) a low powered toy scooter;
- (c) a motorised golf buggy;
- (d) a motorised mobility device;
- (e) a personal mobility device;
- (f) a trailer, other than a caravan;
- (g) a tractor or farm machinery;

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- (h) a vehicle designed for use exclusively in the mining industry;
 - (i) a vehicle designed for use exclusively on a railway or tramway.
- (3) In this section—
- low powered toy scooter** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.
- motorised golf buggy** means a motorised golf buggy under the *Transport Operations (Road Use Management) Act 1995*.
- motorised mobility device** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.
- personal mobility device** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

13 Meaning of *sale by auction*

- (1) Generally, a **sale by auction** of a used motor vehicle or other goods under this Act means the sale of the vehicle or goods in any way commonly known and understood to be by auction.
- (2) However, the sale of a used motor vehicle or other goods by auction is not a sale by auction under this Act if—
 - (a) the person selling the vehicle or goods by auction (the **seller**) owns the vehicle or goods and is not selling the vehicle or goods for someone else; and
 - (b) the auction is conducted, whether by the seller or another entity, wholly by 1 or more electronic communications.
- (3) In this section—

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

Example of facilitating the conduct of an auction—

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

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

Part 2 Licensing

Division 1 Categories of licence

14 Categories of licence

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

- (a) a motor dealer licence;
- (b) a chattel auctioneer licence.

Division 2 Limited motor dealer licence

15 Limited motor dealer licence

- (1) The chief executive may issue a motor dealer licence (a *limited motor dealer licence*) prescribed under a regulation, that limits the activities that may otherwise be performed under a motor dealer licence.
- (2) To be eligible for a limited motor dealer licence, an applicant for the licence must have the educational qualifications approved by the chief executive for obtaining the licence.

Editor's note—

The qualifications are stated on the department's website.

Division 3 How to obtain a licence

16 Steps involved in obtaining a licence

- (1) A person who wishes to obtain a licence must be a suitable person to hold a licence under division 5.
- (2) The person must apply for the licence by—
 - (a) giving the chief executive an application showing, among other things, the person is eligible for the licence; and
 - (b) paying—
 - (i) the fees prescribed under a regulation; and
 - (ii) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid; and
 - (c) giving the chief executive the other information required under section 18.
- (3) In deciding the application, the chief executive must have regard, among other things, to—
 - (a) the person’s suitability to hold a licence under this Act; and
 - (b) the person’s eligibility for the licence.

Division 4 Applications for licence

17 Application for licence

- (1) An applicant for a licence must—
 - (a) apply to the chief executive in the approved form; and
 - (b) state the category of licence being applied for; and
 - (c) state the term of the licence being applied for; and

- (d) establish the applicant's eligibility for the category of licence being applied for; and
 - (e) state the names and addresses of the applicant's business associates; and
 - (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.

18 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.

19 Particular persons can not make application

- (1) A person who is a disqualified person can not make an application for a licence during the period for which the 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 applicant 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 applicant corporation.
- (3) If a person applies for a licence and the chief executive decides to refuse to issue the licence, the person can not make another application for a licence of that type—

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

20 Requirement to give information or material about application or request

- (1) This section applies to any of the following—
- (a) an applicant for a licence;
 - (b) an applicant for renewal of a licence;
 - (c) an applicant for restoration of a licence;

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- (d) an applicant for the appointment or extension of the appointment of a nominated person mentioned in section 51(3) or 52(4) as the applicant's substitute licensee;
 - (e) a licensee who has asked the chief executive to reactivate the licensee's licence.
- (2) The chief executive may, by written notice given to the applicant or licensee, require the applicant or licensee to give the chief executive within a stated reasonable period information or material the chief executive reasonably considers is needed to consider the application or request.

Example of 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 5 Suitability of applicants and licensees

21 Suitability of applicants and licensees—individuals

- (1) An individual is not a suitable person to hold a licence if the individual—
- (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 23 is not a suitable person to hold a licence; or
 - (e) is subject to a relevant control order.

- (2) An individual who is not a suitable person can not hold a licence.

22 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 23 is not a suitable person to hold a licence; or
 - (d) is subject to a relevant control order.
- (2) A corporation is not a suitable person to hold a licence if any of the following applies to an executive officer of the corporation—
- (a) the executive officer is an insolvent under administration;
 - (b) the executive officer has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence;
 - (c) the executive officer is currently disqualified from holding a licence or registration certificate;
 - (d) the chief executive decides under section 23 the executive officer is not a suitable person to hold a licence;
 - (e) the executive officer is subject to a relevant control order.
- (3) A corporation that is not a suitable person can not hold a licence.

23 Chief executive must consider suitability of applicants and licensees

- (1) The chief executive must, when deciding whether a person is a suitable person to hold a licence, consider all of the following things—
 - (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 or registration certificate within the meaning of the relevant Act;
 - (f) whether the person has been disqualified from managing corporations under the Corporations Act;
 - (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 subject to a relevant control order; and
 - (v) whether the individual is capable of satisfactorily performing the activities of a licensee; and

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- (vi) 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 the corporation, or an executive officer of the corporation, is subject to a relevant control order; and
- (iii) whether an executive officer of the corporation has been an insolvent under administration; and
- (iv) whether an executive officer of the corporation has been convicted of an offence against a relevant Act or the Administration Act; and
- (v) 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) However, the chief executive, when deciding whether a person is a suitable person to hold a licence, may not have regard to criminal intelligence given by the commissioner to the chief executive under section 230A.
- (3) 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.

- (4) 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.

24 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.

25 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.

26 Investigations about suitability of applicants, nominated persons and licensees

- (1) The chief executive may make investigations about the following persons to help the chief executive decide whether an applicant or nominated person mentioned in section 20(1) or licensee is a suitable person to hold a licence—
 - (a) the applicant, nominated person or licensee;
 - (b) if the applicant, nominated person or licensee intends carrying on, or carries on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant, nominated person or licensee intends carrying on, or carries on, business in partnership or in conjunction;
 - (c) if the applicant or licensee is a corporation—each executive officer of the corporation;
 - (d) a business associate of the applicant, nominated person or licensee.
- (2) Without limiting subsection (1), the chief executive may ask the commissioner for a criminal history report about 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 report must be written.
- (6) If the person is, or has been, subject to a control order or registered corresponding control order, the report must—
 - (a) state the details of the order; or
 - (b) be accompanied by a copy of the order.

27 Notice of change in criminal history

- (1) This section applies if the commissioner 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 51(3) or 52(4) and appointed as a substitute licensee.
- (2) The commissioner may notify the chief executive that the person's criminal history has changed.
- (3) The notice must—
 - (a) state the following details—
 - (i) the person's name and any other name the commissioner believes the person may use or may have used;
 - (ii) the person's date and place of birth;
 - (iii) a brief description of the nature of the offence giving rise to the conviction or charge to which the change relates; and
 - (b) if the change includes the person becoming subject to a control order or registered corresponding control order—
 - (i) state the details of the order; or
 - (ii) be accompanied by a copy of the order.

- (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 an alleged offence.

28 Costs of criminal history report

- (1) The chief executive may require an applicant mentioned in section 20(1) or a licensee to pay the reasonable, but no more than actual, costs of obtaining a criminal history report under section 26 about—
 - (a) the applicant or licensee; or
 - (b) a nominated person mentioned in section 51(3) or 52(4) as the applicant's substitute licensee; or
 - (c) a person to whom section 26(1)(b), (c) or (d) applies for deciding whether the applicant, licensee or nominated person is a suitable person to hold a licence.
- (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—
 - (a) in an 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.

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- (5) The applicant or licensee is taken to have withdrawn the application for which the criminal history report was requested if the applicant or licensee fails to comply with the criminal history costs requirement.
 - (6) The chief executive must refund to an 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.

29 Use of information obtained under s 26 or s 27

- (1) This section applies to the chief executive in considering—
 - (a) information obtained under section 26 or 27 about an applicant or nominated person mentioned in section 20(1) or a licensee (each a *relevant person*); or
 - (b) information obtained under section 26 about an associate of a relevant person.
- (2) Information about the following may be used only for making a decision about whether a relevant person is, or continues to be, a suitable person to hold a licence—
 - (a) a conviction of the relevant person or an associate of the relevant person;
 - (b) if the relevant person, or an associate of the relevant person, is subject to a control order or registered corresponding control order—the control order.
- (3) Information about a charge against a relevant person may not be relied on as a basis for making a decision as to whether the person is, or continues to be, a suitable person to hold a licence.
- (4) In this section—

associate, of a relevant person, means a person to whom section 26(1)(b), (c) or (d) applies for deciding whether the relevant person is a suitable person to hold a licence.

Division 6 Eligibility for licence

Subdivision 1 Motor dealer licence

32 Eligibility for motor dealer licence

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

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

Subdivision 2 Chattel auctioneer licence

33 Eligibility for chattel auctioneer licence

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

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

Subdivision 3 Chief executives and corporation sole

34 Public trustee is eligible for licence

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

35 Chief executive of department is eligible for licence

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

Division 7 Issue of licences

36 Chief executive may issue or refuse to issue licence

- (1) The chief executive may decide to issue or refuse to issue a licence to an applicant.
- (2) The chief executive may decide to issue a licence to an applicant only if the chief executive is satisfied that—
 - (a) the applicant is a suitable person to hold a licence and—
 - (i) if the applicant intends carrying on business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant intends carrying on business in conjunction is a suitable person to hold a licence; and
 - (ii) if the applicant is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
 - (b) the applicant is eligible for a licence of the category of licence being applied for; and
 - (c) the application complies with sections 17 and 18.
- (3) If the chief executive decides to refuse to issue the licence, the chief executive must give the applicant an information notice about the decision within 14 days after making the decision.

37 Licence—public trustee

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

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

38 Licence—chief executive of department

- (1) 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 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 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.

39 Licence—conditions

- (1) The chief executive may decide to issue a licence on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence.
- (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 8 Restrictions on performing activities under licences

40 Restriction—corporations

- (1) A corporation that holds a licence may perform an activity under its licence at a place only if the activity may be performed by—
 - (a) a licensed person who is in charge of the corporation's business at the place; or
 - (b) a liquidator or controller appointed under the Corporations Act of property of the corporation; or
 - (c) an administrator of the corporation appointed under the Corporations Act; or
 - (d) an administrator of a deed of company arrangement for the corporation appointed under the Corporations Act; or
 - (e) a receiver appointed under the Administration Act for property of the corporation.
- (2) However, subsection (1) does not prevent a corporation that holds a motor dealer licence selling a used motor vehicle by auction if the auction is conducted by a chattel auctioneer who is an employed licensee of the corporation.
- (3) A corporation that is a former licensee may perform an activity authorised under the former licence if the activity is performed by a person mentioned in subsection (1)(b), (c), (d) or (e).

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- (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 a motor dealer’s licence under PAMDA.

41 Restriction—individuals

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

Example—

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

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

42 Restriction—conditions

- (1) This section applies to a licensee who performs an activity under the licensee’s licence that the licensee is not authorised to perform because of a condition on the licensee’s licence.

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- (2) The licensee is taken to be a person who acts as a licensee without a licence for the performance of the activity.

Note—

For some of the consequences of a licensee performing an activity that the licensee is not authorised to perform because of a condition on the licensee's licence, see sections 88, 119, 132 and 149.

Division 9 Renewal and restoration of licences

Subdivision 1 Renewal

43 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.

44 Chief executive may renew or refuse to renew licence

- (1) The chief executive must consider the renewal application and decide to renew or refuse to renew the licence.
- (2) The chief executive may decide to 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 43; 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 to renew the licence, the chief executive must give the applicant an information notice about the decision within 14 days after making the decision.

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

If an application is made under section 43, the licensee's licence is taken to continue in force from the day that it would, apart from this section, have expired until the licensee's application for renewal is—

- (a) decided under section 44; or
- (b) withdrawn by the licensee; or
- (c) taken to have been withdrawn under section 20(3).

Subdivision 2 Restoration

46 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 licence to hold insurance—proof of the currency of the insurance; and

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- (v) if, before or when the application is made, a criminal history costs requirement is made of the person—the amount of the costs required to be paid.
- (3) The application must also be accompanied by—
- (a) an audit report about all trust accounts maintained by the person during the relevant audit period; or
 - (b) a statutory declaration by the person that the person did not operate a trust account during the relevant audit period.
- (4) In this section—
- relevant audit period*, for a person’s licence, means the audit period ending immediately before the licence expired.

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

If an application is made under section 46, the person’s licence is taken to have continued in force from the day that it would, apart from this section, have expired until the application is—

- (a) decided under section 48; or
- (b) withdrawn by the person; or
- (c) taken to have been withdrawn under section 20(3).

48 Chief executive may restore or refuse to restore licence

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

- (i) if the person carries on, or intends to carry on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the person carries on, or intends to carry on, business in conjunction is a suitable person to hold a licence; and
 - (ii) if the person is a corporation—each executive officer of the corporation is a suitable person to hold a licence; and
 - (b) the application is made under section 46; and
 - (c) the person meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.
- (3) If the chief executive decides to refuse to restore the licence, the chief executive must give the person an information notice about the decision within 14 days after the making the decision.
- (4) If the chief executive decides to restore the licence—
- (a) the licence is taken to have been renewed on the day it would, apart from section 47, have expired (the *initial expiry date*); and
 - (b) to remove any doubt, it is declared that a thing done during the period starting on the initial expiry date and ending on the day the decision is made under this section is taken to have been as validly done as it would have been if the licence had been renewed immediately before the initial expiry date.

Division 10 Dealings with licences

Subdivision 1 Transfer of licence

49 Transfer of licence prohibited

A licence may not be transferred.

50 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 a licence is available for sale, loan or hire to someone else, whether licensed or not; or
- (c) permit or allow someone else to hold out that 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 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 licences

51 **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 (the ***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 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.

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.

52 Appointment of substitute licensee—employed licensee in charge of a licensee’s business at a place

- (1) This section applies if an employed licensee who is in charge of a principal licensee’s business at a place will be absent from the place for any reason, other than the employed licensee’s resignation or termination of employment.
- (2) If the employed licensee will be absent from the place for a period of not more than 30 days, the principal licensee may appoint an adult as the employed licensee’s substitute licensee for the period if the adult consents to the appointment.
- (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 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 employed licensee will be absent from the place for a period of more than 30 days, the principal licensee who employs the employed licensee must apply to the chief executive in the approved form for the appointment or the extension of the appointment of an adult (also the *nominated person*) as the licensee’s substitute licensee.

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 is—
 - (i) a suitable person to hold a licence; and

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- (ii) sufficiently qualified to perform the employed licensee'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.

53 Chief executive may appoint or refuse to appoint substitute licensee

- (1) The chief executive may decide to appoint or refuse to appoint a nominated person mentioned in section 51(3) or 52(4) as a licensee's substitute licensee.
- (2) The chief executive may appoint the nominated person only if the chief executive is satisfied that the person—
 - (a) is, under division 5, a suitable person to hold a licence; and
 - (b) is sufficiently qualified to perform the licensee's activities during the period of the licensee's absence; and
 - (c) if the licensee is required as a condition of the licensee's licence to hold insurance—is covered by the insurance or holds insurance that complies with the requirements of the condition.
- (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 licensee and the substitute licensee.
- (5) If the chief executive decides to refuse to appoint the nominated person or impose conditions on the appointment, the chief executive must give the licensee an information notice about the decision within 14 days after making the decision.

54 Substitute licensee

- (1) On appointment, a substitute licensee—
 - (a) must act as substitute for the licensee for whom the substitute is appointed; and
 - (b) is taken to be the licensee during the period of the appointment.
- (2) A licensee for whom a substitute has been appointed must not act under the authority of the licensee's licence while the appointment of the substitute licensee continues.
Maximum penalty—200 penalty units.
- (3) The appointment of the substitute licensee 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 51(1) or 52(2)—to the substitute licensee; or
 - (ii) for a substitute licensee appointed under section 53—to the chief executive and the substitute licensee; 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 51(1) or 52(2)—to the principal licensee who made the appointment; or

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- (ii) for a substitute licensee appointed under section 53—to the chief executive and the principal licensee who applied for the appointment; or
 - (d) the chief executive revokes the substitute licensee’s appointment; or
 - (e) the licensee’s licence is suspended or cancelled; or
 - (f) if the licensee is a principal licensee—the licensee stops carrying on business as a licensee.

55 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 an employed licensee for more than 12 weeks in any period of 12 months.
- (3) The chief executive may not appoint a substitute licensee for a licensee for more than 26 weeks in any period of 12 months.

Subdivision 3 General

56 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 199.

- (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 the 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.

57 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 56; or
 - (b) replace the licence under section 67(5).
- (2) The licensee must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

58 Return of licence for suspension or cancellation

- (1) A person whose licence has been suspended or cancelled under section 229(1) or an order made by QCAT must return the licence to the chief executive within 14 days after the suspension or cancellation unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply if section 61(6) or 62(2) applies.

59 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.

60 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
 - (b) entitle the licensee to a refund of fees for the licence for the balance of the licence's term.
- (6) The holder of a deactivated licence may apply to have the licence renewed under section 43 or restored under section 46 as a deactivated licence at a reduced fee prescribed under a regulation.
- (7) A licensee may ask the chief executive to reactivate the licence.
- (8) However, if the licence has been deactivated for 5 years or more, the licence may be reactivated only if the licensee satisfies any educational or other requirements applying under this Act to an applicant for a licence of the type to be reactivated.
- (9) A request under subsection (7) must be made in the approved form and be accompanied by the fee prescribed under a regulation.

Division 11 Suspension and cancellation of licences

61 Immediate suspension

- (1) This section applies if—
- (a) the chief executive reasonably considers that a licensee’s licence was obtained, or renewed or restored, because of materially incorrect or misleading information; or
 - (b) the chief executive reasonably considers that an irregularity or deficiency exists in a licensee’s trust account; or
 - (c) the chief executive is satisfied a licensee has failed to file an audit report as required under the Administration Act, section 35(2)(b); or
 - (d) a receiver is appointed under the Administration Act, section 47 over property—
 - (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 a 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 decision to suspend the licensee's licence within 14 days after the suspension.
- (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.

62 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;
 - (d) 1 or more of the following persons becoming subject to a relevant control order—
 - (i) the licensee;

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- (ii) if the licensee is a corporation—an executive officer of the corporation.
 - (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 12 General provisions about licences

64 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.

65 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 by the principal licensee as an employed licensee.

Maximum penalty—100 penalty units.

66 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.

67 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 and be accompanied by the fee prescribed under a regulation.
- (3) The chief executive must grant the application if the chief executive is satisfied the licence has been lost, stolen or destroyed, or damaged in a way to require its replacement.
- (4) If the chief executive grants the application, the chief executive must issue another licence to the applicant to replace the original licence.
- (5) The chief executive may also replace a licence if—
 - (a) either—

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- (i) the licensee has given written notice to the chief executive of a prescribed change; 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 licensee must pay the chief executive the fee prescribed under a regulation.
- (7) In this section—
- prescribed change* means a prescribed change under section 69.

68 Register of licences

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

Division 13 General provisions about licensees

69 Licensees to notify chief executive of changes in circumstances

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

Maximum penalty—100 penalty units.

- (2) In this section—

prescribed change means a change prescribed under a regulation.

70 Registered office

A licensee's *registered office* is—

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

71 Licensee must notify chief executive of change in place of business etc.

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

Maximum penalty—200 penalty units.

- (2) An employed licensee must notify the chief executive in the approved form of any change in the licensee’s business address within 14 days after the change.

Maximum penalty—200 penalty units.

72 Advertising

A licensee must not publish, or permit to be published, in a newspaper or elsewhere an advertisement for the licensee’s business without stating in the advertisement the particulars prescribed under a regulation.

Maximum penalty—100 penalty units.

73 Licensee to obtain statement from seller of vehicle

- (1) A licensee must, when buying a motor vehicle or accepting a motor vehicle for sale on consignment from a person (the *seller*) in the course of carrying on the licensee’s business, obtain from the seller a statement, signed by the seller, stating the particulars about the seller and the vehicle prescribed under a regulation.

Maximum penalty—200 penalty units.

- (2) The licensee must keep a copy of the statement at the licensee’s place of business.

Maximum penalty—200 penalty units.

- (3) This section does not apply if the seller is—
- (a) a financier of the business of the licensee; or
 - (b) another licensee.

74 Licensee to give statement to buyer of vehicle

- (1) A licensee must, immediately after selling a motor vehicle to a person (the *buyer*) in the course of carrying on the licensee's business, give the buyer a statement, signed by the licensee, stating the particulars prescribed under a regulation about—
- (a) the vehicle; and
 - (b) the vehicle's owner immediately before the sale.

Maximum penalty—200 penalty units.

- (2) The licensee must keep a copy of the statement at the licensee's place of business.

Maximum penalty—200 penalty units.

- (3) Nothing in this section prevents the statement being contained in the contract for sale of the vehicle.

75 Production of licence

A licensee must, if asked by a person with whom the licensee is dealing, produce the licensee's licence for inspection by the person.

Maximum penalty—100 penalty units.

Part 3 Motor dealers

Division 1 Motor dealers' authorisation and responsibilities

76 What a motor dealer licence authorises

- (1) A motor dealer licence authorises the holder of the licence (*motor dealer*) to perform the following activities in the carrying on of a business of motor dealing—
 - (a) to acquire, primarily for resale, used motor vehicles;
 - (b) to sell used motor vehicles;
 - (c) to sell used motor vehicles on consignment as an agent for others for reward;
 - (d) to sell a leased motor vehicle to the lessee under the terms of the lease;
 - (e) to acquire used motor vehicles, whether or not as complete units, to break up for sale as parts;
 - (f) to sell used motor vehicles mentioned in paragraph (e) as parts;
 - (g) to negotiate, under a consultancy arrangement, for a person who is not a motor dealer or chattel auctioneer for the purchase or sale of a used motor vehicle for the person.
- (2) A motor dealer may perform the activities—
 - (a) in the carrying on of a business, either alone or with others; or
 - (b) as an employee of a motor dealer who carries on the business of motor dealing.
- (3) Despite subsection (1), a motor dealer licence does not authorise the holder to sell a used motor vehicle by auction.

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- (4) However, subsection (3) does not prevent a motor dealer selling a used motor vehicle by auction by employing a chattel auctioneer to sell the vehicle by auction for the motor dealer.
- (5) In this section—
- business of motor dealing*** does not include the business of a financier.
- consultancy arrangement***, for the purchase or sale of a used motor vehicle, means an arrangement under which a person advises someone else—
- (a) where or from whom the other person can buy a used motor vehicle; or
- (b) where or to whom the other person can sell a used motor vehicle.

77 Responsibility for acts and omissions of motor salespersons

- (1) A motor dealer who is a principal licensee must take reasonable steps to ensure each motor salesperson employed by the dealer is properly supervised and complies with this Act.
- (2) A motor dealer who is an employed licensee in charge of a licensee's business at a place of business must take reasonable steps to ensure each motor salesperson employed at the place is properly supervised and complies with this Act.
- (3) A motor dealer who fails to comply with subsection (1) or (2) is liable to disciplinary action under part 7, division 2.

Division 2 Carrying on business

78 Carrying on of business under motor dealer licence

An individual who carries on the business of a motor dealer with others is not required to hold a motor dealer licence if—

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- (a) at least 1 of the persons with whom the individual carries on business is a motor dealer; and
- (b) the individual does not perform the activities of a motor dealer; and
- (c) the individual is a suitable person to hold a licence.

79 Licensee to be in charge of motor dealer's business at a place

- (1) A motor dealer who is an individual and a principal licensee must—
- (a) be in charge of the motor dealer's business at the dealer's registered office; and
 - (b) if the motor dealer has more than 1 place of business—ensure that at each other place of business a motor dealer who is an individual is in charge of the dealer's business at the place.

Maximum penalty—200 penalty units.

- (2) A motor dealer that is a corporation and a principal licensee (*corporate dealer*) must ensure that—
- (a) the individual in charge of the corporate dealer's business at its registered office is a motor dealer; and
 - (b) if the corporate dealer has more than 1 place of business—at each other place of business an individual who is a motor dealer is in charge of the corporate dealer's business at the place.

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 motor dealer's business at more than 1 place.

Maximum penalty—200 penalty units.

- (4) It is not an offence against this section for a motor dealer who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.
- (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.

80 Motor dealer dealing in motor vehicles

- (1) A motor dealer who is performing an activity the motor dealer is authorised to perform in relation to a used motor vehicle under the motor dealer's licence is taken to be performing the activities of a motor dealer whether or not—
 - (a) the motor dealer is the registered operator, as defined under the *Transport Operations (Road Use Management) Act 1995*, of the motor vehicle; or
 - (b) the motor dealer or the motor dealer's associate used the motor vehicle for private purposes.
- (2) The motor dealer must disclose to a potential buyer or seller of a vehicle that the motor dealer is a licensed motor dealer.
Maximum penalty—400 penalty units.
- (3) Also, if a person agrees to purchase a motor vehicle from, or sell a motor vehicle to, the motor dealer, the person must sign a written acknowledgement stating the motor dealer disclosed to the person that the motor dealer is a licensed motor dealer.

Division 3 Appointment

Subdivision 1 Requirements

81 Appointment—sale on consignment

- (1) A motor dealer must not act as a motor dealer for a person (a *client*) to sell the client's motor vehicle on consignment unless—
 - (a) the client first appoints the motor dealer in writing under this subdivision (a *motor dealer appointment*); or
 - (b) a previous motor dealer appointment is assigned to the motor dealer under the terms of the appointment or under section 85 and the appointment is in force.

Maximum penalty—200 penalty units.

- (2) A motor dealer appointment may be for the performance of—
 - (a) a particular service within a stated period (a *single appointment*); or
 - (b) a number of services from time to time while the appointment continues in force (a *continuing appointment*).

82 Content of appointment

- (1) A motor dealer appointment must state—
 - (a) the relevant service to be performed by the motor dealer and how it is to be performed; and
 - (b) for a single appointment—the period of the appointment; and
 - (c) for a continuing appointment—the times when, circumstances in which, or occasions on which the relevant service is to be performed; and
 - (d) the fees, charges and any commission payable for the relevant service; and

-
- (e) the expenses the motor dealer is authorised to incur in connection with the performance of the relevant service; and
 - (f) the source and the estimated amount or value of any rebate, discount, commission or benefit that the motor dealer may receive for any expenses the motor dealer is authorised to incur in connection with the performance of the relevant service; and
 - (g) any conditions, limitations or restrictions on the performance of the relevant service; and
 - (h) when the fees, charges and any commission for the relevant service become payable; and
 - (i) that the appointment may be revoked by either party giving the other party at least 30 days written notice of the revocation, unless the parties agree, in writing, to an earlier day for the appointment to end.
- (2) In this section—
- expenses* includes—
- (a) advertising expenses; and
 - (b) the cost of preparing a motor vehicle for sale.
- relevant service* means—
- (a) for a single appointment—the service to be performed under the appointment; or
 - (b) for a continuing appointment—each of the services or categories of services to be performed at stated times, in stated circumstances or on stated occasions while the appointment is in force.

83 Form of appointment

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

- (3) An appointment that does not comply with subsection (1) is ineffective from the time it is made.

84 Giving signed appointment to client

- (1) A motor dealer appointment must be signed and dated by the client and the motor dealer or someone authorised or apparently authorised to sign for the dealer.
- (2) The motor dealer must give a copy of the signed appointment to the client immediately after it is signed.

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

Subdivision 2 Assignment

85 Proposal for assignment of appointment

- (1) This section applies if a motor dealer who holds a motor dealer appointment from a client proposes to assign the appointment to another motor dealer (the *proposed assignee*) without changing the terms of the appointment.
- (2) However, this section does not apply to the assignment of a motor dealer appointment if—
 - (a) the terms of the appointment authorise the assignment of the appointment; and
 - (b) the assignment is made under the terms of the appointment.
- (3) At least 14 days before the motor dealer assigns the appointment, the motor dealer must give the client written notice of the proposed assignment.
- (4) The notice must state the following—
 - (a) the proposed assignee's name;
 - (b) that the appointment is to be assigned without changing its terms;

- (c) the client may agree or refuse to agree to the proposed assignment;
 - (d) when the proposed assignment is to take effect.
- (5) If the client agrees to the assignment and the motor dealer assigns the appointment under this section, the appointment is taken, for section 81, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

Division 4 Particular conduct provisions

Subdivision 1 Consignment selling

86 Trade-ins

- (1) A motor dealer must not accept a trade-in from the buyer of a motor vehicle being sold on consignment.
- Maximum penalty—200 penalty units or 1 year's imprisonment.
- (2) However, the motor dealer does not contravene subsection (1) if the dealer purchases the motor vehicle offered as a trade-in as part of a separate transaction between the dealer and the buyer.

Subdivision 2 Recovery of reward or expense

87 Commission may be claimed only for actual amounts

- (1) This section applies to a motor dealer who sells a motor vehicle on consignment for the payment of a commission.
- (2) The motor dealer must not claim commission worked out on an amount that is more than the actual sale price of the vehicle.

Maximum penalty—200 penalty units.

88 Restriction on remedy for reward or expense

- (1) A person is not entitled to sue for, or recover or keep, a reward or expense for the performance of an activity as a motor dealer unless, at the time the activity was performed, the person—
 - (a) held a motor dealer licence; and
 - (b) was authorised under the person’s licence to sell motor vehicles on consignment; and
 - (c) had been properly appointed under division 3 by the person to be charged with the reward or expense.
- (2) A person who sues for, or recovers or keeps, a reward or expense for performance of an activity as a motor dealer other than as provided by subsection (1) commits an offence.

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

89 Excess commission etc. to be repaid

- (1) This section applies if—
 - (a) a person is convicted of an offence against section 87(2) or 88(2); 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 that court.

Subdivision 3 Interests in motor vehicles

90 Definition for sdiv 3

In this subdivision—

obtain includes being in any way concerned in obtaining.

91 Beneficial interest—options

- (1) A motor dealer commits an offence if the dealer obtains from the owner of a used motor vehicle, other than another motor dealer, an option to purchase the vehicle in which the dealer has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.

- (2) A motor salesperson commits an offence if the salesperson obtains from the owner of a used motor vehicle, other than a motor dealer, an option to purchase the vehicle in which the salesperson has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.

- (3) A motor dealer must not sell a motor vehicle if the motor dealer has a beneficial interest in an option to purchase the vehicle, other than an option to purchase given by another motor dealer.

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.

92 Beneficial interest—other than options

(1) This section applies to a motor vehicle placed by a person (*client*) with a motor dealer for sale on consignment, but does not apply if section 91 applies.

(2) The motor dealer commits an offence if the motor dealer obtains a beneficial interest in the vehicle.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) A motor salesperson employed by the motor dealer commits an offence if the salesperson obtains a beneficial interest in the vehicle.

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) A person does not contravene subsection (2) or (3) if—

(a) the person—

(i) before a contract for the sale of the motor vehicle is entered into, obtains the client's written acknowledgement in the approved form that the client—

(A) is aware that the person is interested in obtaining a beneficial interest in the motor vehicle; and

(B) consents to the person obtaining the interest; and

(ii) acts fairly and honestly in relation to the sale; and

(b) no commission or other reward is payable for the sale; and

(c) the client is in substantially as good a position as the client would be if the motor vehicle 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.

93 Return of beneficial interest if in form of commission

- (1) This section applies if—
 - (a) a person is convicted of an offence against section 92(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 retained from someone (*client*) for whom the person performed an activity an amount of commission 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 that court.

Subdivision 4 Prescribed conduct provisions

94 Prescribed conduct provisions

- (1) A regulation may provide for conduct standards for motor dealers and motor salespersons in carrying on motor dealing practice.
- (2) A provision mentioned in subsection (1) is a *prescribed conduct provision*.

Note—

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

Subdivision 5 Sales of used motor vehicles that are written-off vehicles

95 Notice to be given about used motor vehicle—written-off vehicle

- (1) This section applies if a used motor vehicle that is an unregistered written-off vehicle is to be sold by a motor dealer, other than by auction, to a prospective buyer (the *buyer*).
- (2) Before the motor dealer sells the vehicle to the buyer, the motor dealer must tell the buyer that the vehicle is a written-off vehicle and state—
 - (a) if the vehicle is a repairable write-off—that the vehicle is a repairable write-off and must pass a written-off vehicle inspection under a regulation under the *Transport Operations (Road Use Management) Act 1995* before it can be registered; or
 - (b) if the vehicle is a statutory write-off—that the vehicle can not be registered.

Maximum penalty—200 penalty units.

- (3) The motor dealer must also ask the buyer to sign an acknowledgement, printed in type no smaller than 12 point, that—
 - (a) identifies the used motor vehicle as a written-off vehicle; and
 - (b) states whether the vehicle is a repairable write-off or a statutory write-off.

Maximum penalty—200 penalty units.

- (4) The motor dealer must—
 - (a) give the original of the acknowledgement to the buyer; and
 - (b) keep a copy of the acknowledgement.

Maximum penalty—200 penalty units.

Division 5 Sale of motor vehicles by motor dealer

96 Obligation to give clear title

- (1) This section applies if a used motor vehicle is to be sold by or for a motor dealer (the *selling agent*) to someone else (the *buyer*), other than by auction.

Note—

For a sale by auction, see section 142.

- (2) The following person (the *responsible licensee*) must ensure the buyer has clear title to the motor vehicle at the time property in the vehicle passes to the buyer—
- (a) if the selling agent owns the motor vehicle or is appointed to sell the vehicle on consignment for someone other than another motor dealer or chattel auctioneer—the selling agent;
 - (b) if the selling agent is selling the motor vehicle for another motor dealer or chattel auctioneer—the other motor dealer or chattel auctioneer for whom the selling agent is selling the vehicle.

Maximum penalty—200 penalty units.

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 subsection.

- (3) In a proceeding for an offence against subsection (2), it is a defence for the defendant to prove that the defendant took all reasonable steps to ensure subsection (2) was complied with.
- (4) A proceeding against a motor dealer or chattel auctioneer for an offence against this section does not affect any civil liability of any person, including the motor dealer or chattel auctioneer, arising out of the same facts that constitute the offence.

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- (5) Subsection (2) does not apply to the extent that a security interest in the motor vehicle is registered under the *Personal Property Securities Act 2009* (Cwlth).

Note—

The *Personal Property Securities Act 2009* (Cwlth) provides for circumstances in which a buyer of a motor vehicle takes the vehicle free of a security interest under that Act.

- (6) In this section—
sold includes sold on consignment.

97 **Contract must contain statement of guarantee of clear title**

- (1) A contract for the sale of a used motor vehicle by a selling agent must state that the responsible licensee guarantees that the buyer will have clear title to the vehicle when property in the vehicle passes to the buyer.
- (2) If the contract does not comply with subsection (1), the buyer by written notice given to the selling agent may avoid the contract.
- (3) The notice must be given to the selling agent within 7 days after the day property in the vehicle passes to the buyer.

Division 6 **Cooling-off period**

98 **Definitions for div 6**

In this division—

business day, for a motor dealer, means a day, other than a Sunday or public holiday, when the motor dealer's place of business is open for business.

cooling-off period see section 99.

non-refundable deposit see sections 106(1) and 107(1).

used motor vehicle does not include—

-
- (a) an unregistered motor vehicle—
 - (i) that is incapable of being registered in Queensland because of its design; or
 - (ii) intended to be used for wrecking or dismantling; or
 - (b) a commercial vehicle; or
 - (c) a caravan.

99 Meaning of *cooling-off period*

- (1) The *cooling-off period* for the purchase of a used motor vehicle from a motor dealer starts on the day a contract for the purchase of the vehicle is enforceable against the motor dealer.
- (2) The *cooling-off period* for the purchase of a used motor vehicle ends—
 - (a) if the motor dealer's actual close of business on the motor dealer's next business day is 5p.m. or later—at the time of the motor dealer's actual close of business on that business day; or

Examples—

- 1 Assume the contract is entered into on Friday and is immediately enforceable. Assume also the cooling-off period is not affected by public holidays and that, on each day the motor dealer is open for business, the motor dealer's actual close of business is not before 5p.m. The cooling-off period ends at the time of the motor dealer's actual close of business on the following Saturday.
 - 2 Assume the contract is entered into on Friday afternoon, but is conditional on a prior contract to purchase the vehicle not being proceeded with by 5p.m. Saturday. Assume that the prior contract is avoided at 4p.m. Saturday. Assume also the cooling-off period is not affected by public holidays and that, on each day the motor dealer is open for business, the motor dealer's actual close of business is not before 5p.m. The cooling-off period ends at the time of the motor dealer's actual close of business on the following Monday.
- (b) if the motor dealer's actual close of business on the motor dealer's next business day is earlier than

5p.m.—at the time of the motor dealer’s usual close of business on the business day immediately following the next business day; or

Example—

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

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

100 Application of div 6

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

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

- (1) A motor dealer must not advertise or display for sale a motor vehicle for sale on consignment unless it is advertised or

displayed for sale as a vehicle that is not subject to a cooling-off period in the way provided under a regulation.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a sale on consignment of a motor vehicle owned by a motor dealer or chattel auctioneer.
- (3) Also, to remove any doubt, it is declared that subsection (1) is not limited by section 100(2)(b).

102 Notice to be given about used motor vehicle—no prior contract

- (1) This section applies if a used motor vehicle is not subject to any prior contract with a prospective buyer for its sale.
- (2) A motor dealer must give to the prospective buyer of the vehicle a written statement in the approved form under this section.

Maximum penalty—200 penalty units.

- (3) The statement must include the following—
 - (a) the motor vehicle, clearly identified, to which the statement relates;
 - (b) the names and addresses of the motor dealer and prospective buyer;
 - (c) a clear statement that the prospective buyer may avoid any contract for the purchase of the vehicle from the motor dealer during the cooling-off period;
 - (d) the day and time when the statement is given;
 - (e) the day and time the cooling-off period ends;
 - (f) the amount of non-refundable deposit forfeited by the prospective buyer if the buyer avoids the contract.
- (4) The statement must be signed and dated by the prospective buyer and the motor dealer or someone authorised or apparently authorised to sign for the motor dealer.

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- (5) The motor dealer or authorised person must give the original of the statement to the prospective buyer immediately before the buyer signs any contract for the purchase of the vehicle.
Maximum penalty—200 penalty units.
- (6) The motor dealer must keep a copy of the statement.
Maximum penalty—100 penalty units.

103 Option to purchase during cooling-off period

- (1) This section applies if a used motor vehicle is subject to a prior contract with a prospective buyer that is not immediately enforceable.
- (2) The motor dealer may give not more than 1 other person (*option holder*) an option to purchase the vehicle even though the vehicle is subject to a prior contract.
- (3) If the motor dealer gives an option to purchase the motor vehicle to someone else while an option to purchase is still current, the dealer commits an offence.
Maximum penalty—100 penalty units.
- (4) The motor dealer must give the option holder a written statement under this section.
Maximum penalty—200 penalty units.
- (5) The statement must include the following—
 - (a) the motor vehicle, clearly identified, to which the statement relates;
 - (b) the names and addresses of the motor dealer and option holder;
 - (c) the option to purchase is conditional on a prior contract for the sale of the vehicle being avoided by the buyer under the prior contract;
 - (d) the option holder has no legally enforceable rights under the option to purchase the vehicle, unless the prior contract is avoided;

- (e) when the option holder may exercise the holder's rights under the option;
 - (f) the day and time when the statement is given;
 - (g) the amount of non-refundable deposit forfeited by the option holder if the holder declines to enter into a contract for the purchase of the vehicle for any reason other than because the prior contract was not avoided;
 - (h) any other thing prescribed under a regulation.
- (6) The statement must be signed and dated by the option holder and the motor dealer or someone authorised or apparently authorised to sign for the motor dealer.
- (7) The motor dealer or authorised person must give the statement to the option holder immediately before the option holder signs the option to purchase the vehicle.
- Maximum penalty—200 penalty units.
- (8) The motor dealer must keep a copy of the statement.
- Maximum penalty—100 penalty units.

104 Buyer's rights if notice not given or materially defective

- (1) This section applies if a person (*buyer*) has purchased a used motor vehicle and—
- (a) the buyer has not been given the statement under section 102; or
 - (b) the statement has been given to the buyer, but the statement is defective in a material particular.
- (2) The buyer, by written notice given to the motor dealer, may avoid the contract for the sale of the used motor vehicle.
- (3) The notice must be given to the motor dealer within 7 days after the day property in the vehicle passes to the buyer.
- (4) If the contract is avoided under this section, the motor dealer—

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- (a) must do everything in the motor dealer's power to return the buyer to the position the buyer was in before the vehicle was purchased; or
- (b) if the buyer can not be returned to that position—is liable for any financial loss suffered by the buyer because the buyer can not be returned to that position.

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 subsection.

105 Contract must contain cooling-off clause

- (1) A contract for the sale of a used motor vehicle by a motor dealer must contain a clause clearly headed 'COOLING-OFF PERIOD' stating the following—
 - (a) the day and time the cooling-off period starts;
 - (b) the day and time the cooling-off period ends;
 - (c) property in the motor vehicle does not pass to the buyer until the end of the cooling-off period, unless the buyer takes physical possession of the vehicle for a purpose other than—
 - (i) a vehicle inspection; or
 - (ii) a test drive;
 - (d) the buyer or the buyer's agent may possess the vehicle during the cooling-off period, but only to have the vehicle independently inspected or to test drive the vehicle;
 - (e) the buyer may avoid the contract at any time during the cooling-off period by giving written notice to that effect to the dealer in accordance with this Act;
 - (f) the amount of any non-refundable deposit paid by the buyer if the contract is avoided during the cooling-off period;

- (g) if the contract is avoided during the cooling-off period, the motor dealer must return to the buyer—
 - (i) any trade-in vehicle offered by the buyer that the motor dealer has taken possession of; and
 - (ii) any deposit paid by the buyer, less the amount of non-refundable deposit.
- (2) If the contract does not comply with subsection (1), the buyer, by written notice given to the motor dealer, may avoid the contract for the sale of the used motor vehicle.
- (3) The notice must be given to the motor dealer within 7 days after the day property in the vehicle passes to the buyer.

106 Consideration for cooling-off period

- (1) The consideration payable for the cooling-off period for the purchase of a used motor vehicle (the *non-refundable deposit*) is the amount prescribed or worked out under a regulation.
- (2) The non-refundable deposit may be paid as the deposit or part of the deposit for the vehicle.
- (3) If the contract is not avoided during the cooling-off period, the non-refundable deposit must be deducted from the purchase price of the vehicle.
- (4) If a deposit is paid for the vehicle—
 - (a) if the amount of the deposit is more than the amount of the non-refundable deposit—the deposit is taken to include the non-refundable deposit; or
 - (b) if the amount of the deposit is equal to or less than the amount of the non-refundable deposit—the deposit is taken to be the non-refundable deposit.
- (5) If no deposit is paid for the vehicle, the motor dealer is taken to have waived the payment of the non-refundable deposit.

107 Consideration for option

- (1) The consideration payable for an option for the purchase of a used motor vehicle under section 103 (also the *non-refundable deposit*) is the amount prescribed or worked out under a regulation.
- (2) If the option holder declines to enter into a contract for the purchase of the vehicle for any reason other than because the prior contract was not avoided, the amount of non-refundable deposit is forfeited by the option holder.
- (3) If the option holder enters into a contract for the purchase of the vehicle, the amount of non-refundable deposit paid for the option is taken to be the non-refundable deposit for the cooling-off period.
- (4) If no consideration is paid for the option—
 - (a) the motor dealer is taken to have waived the payment of the non-refundable deposit for the option; and
 - (b) the option is enforceable by the option holder against the motor dealer despite the absence of consideration.

108 Harassment or coercion

A motor dealer or other person must not harass or coerce a person for the purpose of dissuading or preventing the person from exercising a right conferred on the person by this division.

Maximum penalty—200 penalty units or 2 years imprisonment.

109 Property does not pass during cooling-off period

- (1) Property in a used motor vehicle subject to a cooling-off period does not pass to the buyer of the vehicle until the end of the cooling-off period.
- (2) Property in a motor vehicle offered to the motor dealer as a trade-in does not pass to the dealer until the end of the cooling-off period.

- (3) A deposit, other than a non-refundable deposit, given to a motor dealer by a buyer of a used motor vehicle from the dealer remains the property of the buyer until the end of the cooling-off period.

110 Buyer may avoid contract during cooling-off period

The buyer of a used motor vehicle may avoid the contract to purchase the vehicle during the cooling-off period.

111 Procedure for avoidance

- (1) A buyer of a used motor vehicle who wishes to avoid the contract to purchase the vehicle must give the motor dealer or a person apparently working for the motor dealer at the motor dealer's place of business a written notice indicating that the buyer terminates the contract.
- (2) The notice must be given before the cooling-off period ends.
- (3) Subsection (1) does not limit the *Acts Interpretation Act 1954*, part 10.

112 What happens when contract avoided

- (1) Notice given under section 111 brings the contract, and any related contract, to an end.
- (2) If the motor dealer to whom notice is given has given an option to purchase the motor vehicle to an option holder under section 103, the motor dealer must immediately advise the option holder that—
 - (a) the prior contract has been avoided; and
 - (b) a contract to purchase the vehicle must be entered into before the end of the motor dealer's next business day or any non-refundable deposit is forfeited.
- (3) In this section—
related contract includes—

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- (a) a contract about the provision of finance to purchase the vehicle; and
- (b) a contract of insurance for the vehicle.

113 Consideration for used motor vehicle during cooling-off period

- (1) A motor dealer may accept a trade-in or other consideration from a buyer of a used motor vehicle before the end of the cooling-off period.
- (2) However, the motor dealer must not deal in the trade-in or other consideration during the cooling-off period.

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

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

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

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

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.

Division 7 Dealing with warranted and unwarranted vehicles

114 Definition for div 7

In this division—

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

115 Statutory warranty for warranted vehicles

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

116 Unwarranted and restorable vehicles to be identified when offered for sale

- (1) A motor dealer may advertise or display for sale an unwarranted vehicle only if it is advertised or displayed for sale, in the way provided under a regulation, as a vehicle that does not have a statutory warranty.

Maximum penalty—100 penalty units.

- (2) A motor dealer may advertise or display for sale a restorable vehicle only if it is advertised or displayed for sale in the way provided under a regulation.

Maximum penalty—100 penalty units.

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

116A Waiver of statutory warranty for restorable vehicles

- (1) A motor dealer must, before a proposed buyer enters into a contract for the purchase of a restorable vehicle, give the buyer a written notice stating that the buyer may waive the statutory warranty for the vehicle.
- (2) If the proposed buyer agrees to purchase the restorable vehicle, the buyer may waive the statutory warranty for the vehicle by signing the notice before the buyer enters into a contract for the sale of the vehicle.
- (3) The notice must clearly identify the restorable vehicle to which it relates.

- (4) On the signing of the notice, the proposed buyer is taken to waive the statutory warranty for the restorable vehicle when the contract for its purchase is entered into.

Division 8 General

117 Motor dealer to keep transactions register

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

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

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

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

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

- (5) In this section—

motor dealer—

- (a) means a motor dealer who is a principal licensee or a person in charge of a licensee's business at a place; but
- (b) does not include a motor dealer whose licence is conditioned to allow the dealer to perform only the activity of negotiating, under a consultancy arrangement, for a person who is not a motor dealer or chattel auctioneer for the purchase of a motor vehicle for the person.

transaction means any of the following—

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

118 Contract of sale

- (1) A motor dealer must ensure that a contract for the sale of a motor vehicle by the motor dealer—
- (a) is in writing; and
 - (b) contains the particulars prescribed under a regulation in the way prescribed under the regulation.

Maximum penalty—200 penalty units.

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

Maximum penalty—200 penalty units.

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

Division 9 Particular offences

119 Acting as motor dealer

- (1) A person must not carry on the business of a motor dealer unless—

- (a) the person holds a motor dealer licence; and
- (b) the activities performed in the carrying on of business as a motor dealer are authorised under the person's licence.

Maximum penalty—400 penalty units or 2 years imprisonment.

- (2) Without limiting the ways a person may carry on the business of a motor dealer, a person *carries on business* as a motor dealer if the person—
 - (a) advertises, notifies or states that the person carries on the business of motor dealing, either generally or for a single transaction; or
 - (b) in any way holds out as being ready to carry on the business of motor dealing, either generally or for a single transaction.
- (3) This section does not apply to a person who carries on a business that is primarily concerned with the hiring out or leasing of motor vehicles.

120 Motor dealer must not act for more than 1 party

- (1) A motor dealer must not act for more than 1 party to a transaction.

Maximum penalty—200 penalty units.

- (2) If the motor dealer acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made.

121 Employment of persons in motor dealer business

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

Maximum penalty—200 penalty units.

- (2) A principal licensee who is an individual and carries on the business of a motor dealer must not employ, as a motor

salesperson for the business, himself or herself or another individual with whom the principal licensee carries on business as a motor dealer.

Maximum penalty—200 penalty units.

- (3) A principal licensee that is a corporation and carries on business as a motor dealer must not employ an executive officer of the corporation as a motor salesperson for the business.

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.

Part 4 Chattel auctioneers

Division 1 Chattel auctioneers' authorisation

122 What a chattel auctioneer licence authorises

- (1) A chattel auctioneer licence authorises the holder of the licence (a *chattel auctioneer*) to perform the activity of selling goods by auction.
- (2) A chattel auctioneer licence also authorises the chattel auctioneer to sell the goods by any means during the auction period.
- (3) A chattel auctioneer may perform the activity—
- (a) in the carrying on of a business, either alone or with others; or
- (b) as an employee of—
- (i) a chattel auctioneer; or
- (ii) a motor dealer.
- (4) In this section—

auction period, for a chattel auctioneer for the sale of goods, means a period for which the chattel auctioneer is appointed under a chattel auctioneer appointment or otherwise authorised or permitted under this or another Act to sell the goods.

Division 2 Carrying on business

123 Carrying on of business under chattel auctioneer licence

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

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

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

- (1) A chattel auctioneer who is an individual and a principal licensee must—
 - (a) be in charge of the chattel auctioneer's business at the chattel auctioneer's registered office; and
 - (b) if the chattel auctioneer has more than 1 place of business, ensure that at each other place of business an individual who is a chattel auctioneer is in charge of the chattel auctioneer's business at the place.

Maximum penalty—200 penalty units.

- (2) A chattel auctioneer that is a corporation and a principal licensee (*corporate chattel auctioneer*) must ensure that—

- (a) the individual in charge of the corporate chattel auctioneer's business at its registered office is a chattel auctioneer; and
- (b) if the corporate chattel auctioneer has more than 1 place of business, at each other place of business an individual who is a chattel auctioneer is in charge of the corporate chattel auctioneer's business at the place.

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 chattel auctioneer's business at more than 1 place of business.

Maximum penalty—200 penalty units.

- (4) It is not an offence against this section for a chattel auctioneer who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.
- (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.

Division 3 Appointment

Subdivision 1 Requirements

125 Appointment of chattel auctioneer

- (1) A chattel auctioneer who is asked by a person (*client*) to perform an activity authorised under the chattel auctioneer's licence must not act for the client unless—

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- (a) the client first appoints the chattel auctioneer in writing under this subdivision (*chattel auctioneer appointment*); or
- (b) a previous chattel auctioneer appointment by the client is assigned to the chattel auctioneer under the terms of the appointment or under section 129 and the appointment is in force.

Maximum penalty—200 penalty units.

- (2) However, subsection (1) does not apply if the activity to be performed is—
 - (a) the sale of livestock; or
 - (b) authorised under a motor dealer appointment.
- (3) A chattel auctioneer appointment may be for the performance of—
 - (a) the sale of particular goods by auction and any other service associated with the auction (*single appointment*); or
 - (b) a number of services from time to time while the appointment continues in force (*continuing appointment*).

126 Content of appointment

- (1) A chattel auctioneer appointment must state—
 - (a) the relevant service to be performed by the chattel auctioneer and how it is to be performed; and
 - (b) for a single appointment—the day set for the auction; and
 - (c) for a continuing appointment—the times when, circumstances in which, or occasions on which the relevant service is to be performed; and
 - (d) the fees, charges and any commission payable for the relevant service; and

- (e) the expenses the chattel auctioneer is authorised to incur in connection with the performance of the relevant service; and
 - (f) the source and the estimated amount or value of any rebate, discount, commission or benefit that the chattel auctioneer may receive for any expenses the chattel auctioneer is authorised to incur in connection with the performance of the relevant service; and
 - (g) any conditions, limitations or restrictions on the performance of the relevant service; and
 - (h) when the fees, charges and any commission for the relevant service become payable; and
 - (i) that the appointment may be revoked by either party giving the other party at least 30 days written notice of the revocation, unless the parties agree, in writing, to an earlier day for the appointment to end.
- (2) If the relevant service includes the sale of goods for which the commission payable is expressed as a percentage of an estimated sale price, the appointment must state that the commission is worked out only on the actual sale price.
- (3) In this section—
- expenses* includes advertising, marketing and travelling expenses.
- relevant service* means—
- (a) for a single appointment—the services to be performed under the appointment; or
 - (b) for a continuing appointment—each of the services or categories of services to be performed at stated times, in stated circumstances or on stated occasions while the appointment is in force.

127 Form of appointment

- (1) A chattel auctioneer appointment must be in the approved form.

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

128 Giving signed appointment to client

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

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

Subdivision 2 Assignment

129 Proposal for assignment of appointments

- (1) This section applies if a chattel auctioneer who holds a chattel auctioneer appointment from a client proposes to assign the appointment to another chattel auctioneer (*proposed assignee*) without changing the terms of the appointment.
- (2) However, this section does not apply to the assignment of a chattel auctioneer appointment if—
 - (a) the terms of the appointment authorise the assignment of the appointment; and
 - (b) the assignment is made under the terms of the appointment.
- (3) At least 14 days before the chattel auctioneer assigns the appointment, the chattel auctioneer must give the client written notice of the proposed assignment.
- (4) The notice must state the following—
 - (a) the proposed assignee's name;

- (b) that the appointment is to be assigned without changing its terms;
 - (c) the client may agree or refuse to agree to the proposed assignment;
 - (d) when the proposed assignment is to take effect.
- (5) If the client agrees to the assignment and the chattel auctioneer assigns the appointment under this section, the appointment is taken, for section 125, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

Division 4 Particular conduct provisions

Subdivision 1 Auctions of goods

130 Buyer's premium

- (1) This section applies to an auction of goods.
 - (2) A chattel auctioneer must not charge the buyer of goods a buyer's premium unless—
 - (a) the chattel 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 chattel auctioneer does not act for the buyer of the goods only because the chattel auctioneer accepts a buyer's premium from the buyer.

(4) In this section—

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

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

Subdivision 2 Recovery of reward or expense

131 Commission may be claimed only for actual amounts

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

Maximum penalty—200 penalty units.

132 Restriction on remedy for reward or expense

- (1) A person is not entitled to sue for, or recover or keep, a reward or expense for the performance of an activity as a chattel auctioneer unless, at the time the activity was performed, the person—
 - (a) held a chattel auctioneer licence; and
 - (b) was authorised under the person's licence to perform the activity; and
 - (c) had been properly appointed under division 3 by the person to be charged with the reward or expense.
- (2) A person who sues for, or recovers or keeps, a reward or expense for the performance of an activity as a chattel auctioneer other than as provided by subsection (1) commits an offence.

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

133 Restriction on recovery of reward or expense above amount allowed

- (1) A person is not entitled to sue for, or recover or keep, a reward for the performance of an activity as a chattel auctioneer that is more than the amount of the reward stated in the appointment given under section 125.
- (2) However, if the reward for the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or keep, a reward more than the amount allowed under the regulation.
- (3) A person is not entitled to sue for, or recover or keep, expenses for the performance of an activity as a chattel auctioneer that are more than the amount of the expenses stated in the appointment given to the person under section 125 and actually expended.
- (4) However, if the amount of expenses that may be incurred for the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or keep, an amount more than the amount allowed under the regulation.
- (5) Subsection (2) does not prevent the person suing for, recovering or keeping, in addition to the amount allowed under a regulation for the reward, an amount for GST payable for a supply.
- (6) A person who sues for, or recovers or keeps, a reward or expense for the performance of an activity as a chattel auctioneer other than as provided by this section commits an offence.

Maximum penalty for subsection (6)—200 penalty units.

- (7) 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 keep the expenses; or

- (b) if the benefit has no fixed amount—the market value of the benefit.

134 Excess commission etc. to be repaid

- (1) This section applies if—
 - (a) a person is convicted of an offence against section 131(2), 132(2) or 133(6); 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 that court.

Subdivision 3 Interests in goods

135 Definition for sdiv 3

In this subdivision—
obtain includes being in any way concerned in obtaining.

136 Beneficial interest—options

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

Maximum penalty—200 penalty units or 3 years imprisonment.

- (3) A chattel auctioneer must not sell goods if the chattel auctioneer obtains a beneficial interest in an option to purchase the goods.

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.

137 Beneficial interest—other than options

- (1) This section applies to goods placed by a person (*client*) with a chattel auctioneer for sale, but does not apply if section 136 applies.
- (2) The chattel auctioneer commits an offence if the chattel auctioneer obtains a beneficial interest in the goods.

Maximum penalty—200 penalty units or 3 years imprisonment.

- (3) A person does not contravene subsection (2) if—
- (a) the person—
- (i) before the earlier of the auction of the goods or a contract for the sale of the goods is entered into, obtains the client's written acknowledgement in the approved form that the client—
- (A) is aware that the person is interested in obtaining a beneficial interest in the goods; and
- (B) consents to the person obtaining the interest; and
- (ii) acts fairly and honestly in relation to the sale; and

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- (b) no commission or other reward is payable for the sale; and
 - (c) the client is in substantially as good a position as the client would be if the goods were sold at fair market value.
- (4) If the chattel auctioneer has not obtained the acknowledgement mentioned in subsection (3)(a)(i) and knows, or ought to know, that an associate of the chattel auctioneer intends bidding at the auction, the chattel auctioneer must, immediately before the auction—
- (a) identify the associate to those present at the auction; and
 - (b) announce to those present that the person is an associate of the chattel auctioneer and intends bidding at the auction.
- (5) If the chattel auctioneer complies with subsection (4), the chattel auctioneer is taken to have satisfied subsection (3)(a)(i).

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.

138 Return of beneficial interest if in form of commission

- (1) This section applies if—
- (a) a person is convicted of an offence against section 137(2); 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 of commission 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 that court.

139 Non-application of s 137 for particular livestock sales

Section 137 does not apply to livestock sales if the chattel auctioneer obtains the client's written acknowledgement that the client—

- (a) is aware that the chattel auctioneer is interested in obtaining a beneficial interest in the livestock; and
- (b) consents to the chattel auctioneer obtaining the interest.

Subdivision 4 Prescribed conduct provisions

140 Prescribed conduct provisions

- (1) A regulation may provide for conduct standards for chattel auctioneers in carrying on chattel auctioneering practice.
- (2) A provision mentioned in subsection (1) is a *prescribed conduct provision*.

Note—

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

Subdivision 5 Sales of written-off vehicles

141 Announcements before auction—written-off vehicle

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

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- (a) if the vehicle is a repairable write-off—that the vehicle is a repairable write-off and must pass a written-off vehicle inspection under a regulation under the *Transport Operations (Road Use Management) Act 1995* before it can be registered; or
- (b) if the vehicle is a statutory write-off—that the vehicle can not be registered.

Maximum penalty—100 penalty units.

- (2) A chattel auctioneer does not contravene subsection (1) if—
 - (a) 2 or more written-off vehicles that are repairable write-offs are to be auctioned in consecutive lots; and
 - (b) immediately before the first vehicle is to be auctioned, the chattel auctioneer—
 - (i) identifies the vehicles; and
 - (ii) announces that the identified vehicles are repairable write-offs and must pass a written-off vehicle inspection under a regulation under the *Transport Operations (Road Use Management) Act 1995* before they can be registered.

Division 5 Sale of motor vehicles by auction

142 Obligation to give clear title

- (1) This section applies if a used motor vehicle is to be sold by a chattel auctioneer (the *selling agent*) at auction to someone else (the *buyer*).
- (2) The following person (the *responsible licensee*) must ensure the buyer has clear title to the motor vehicle at the time property in the vehicle passes to the buyer—
 - (a) if the selling agent owns the vehicle or is auctioning the vehicle for someone other than a motor dealer or another chattel auctioneer—the selling agent;

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- (b) if the selling agent is auctioning the vehicle for a motor dealer or another chattel auctioneer—the motor dealer or other chattel auctioneer for whom the selling agent is auctioning the vehicle.

Maximum penalty—200 penalty units.

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 subsection.

- (3) In a proceeding for an offence against subsection (2), it is a defence for the defendant to prove that the defendant took all reasonable steps to ensure subsection (2) was complied with.
- (4) A proceeding against a chattel auctioneer or motor dealer for an offence against this section does not affect any civil liability of any person, including the chattel auctioneer or dealer, arising out of the same facts that constitute the offence.
- (5) Subsection (2) does not apply to the extent that a security interest in the motor vehicle is registered under the *Personal Property Securities Act 2009* (Cwlth).

Note—

The *Personal Property Securities Act 2009* (Cwlth) provides for circumstances in which a buyer of a motor vehicle takes the vehicle free of a security interest under that Act.

143 Contract must contain statement of guarantee of clear title

- (1) A contract for the sale of a used motor vehicle by a selling agent must state that the responsible licensee guarantees that the buyer will have clear title to the vehicle when property in the vehicle passes to the buyer.
- (2) If the contract does not comply with subsection (1), the buyer, by written notice given to the selling agent may avoid the contract.
- (3) The notice must be given to the selling agent within 7 days after the day property in the vehicle passes to the buyer.

Division 6 Dealing with warranted and unwarranted vehicles

144 Definition for div 6

In this division—

chattel auctioneer includes a person performing the activities of a chattel auctioneer without a licence.

145 Statutory warranty for warranted vehicles

Schedule 1 provides for a statutory warranty for warranted vehicles sold by a chattel auctioneer in particular circumstances.

146 Unwarranted and restorable vehicles to be identified when offered for sale

- (1) A chattel auctioneer may advertise or display for sale an unwarranted vehicle only if it is advertised or displayed for sale, in the way provided under a regulation, as a vehicle that does not have a statutory warranty.

Maximum penalty—100 penalty units.

- (2) A chattel auctioneer may advertise or display for sale a restorable vehicle only if it is advertised or displayed for sale in the way provided under a regulation.

Maximum penalty—100 penalty units.

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

146A Bidders to register for auction of restorable vehicles

- (1) Before a restorable vehicle is offered for sale, a chattel auctioneer must invite persons intending to bid for the vehicle when it is offered for sale to register as a bidder (a *registered bidder*) for the sale.

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- (2) The chattel auctioneer must also inform the persons that by registering as a bidder, the person agrees to purchase the restorable vehicle on the condition that the person is taken to waive the vehicle's statutory warranty when the contract for the vehicle's purchase is entered into.

147 Announcements before auction

- (1) A chattel auctioneer must announce, immediately before the auction of any unwarranted vehicle, that the vehicle does not have a statutory warranty.

Maximum penalty—100 penalty units.

- (2) A chattel auctioneer does not contravene subsection (1) if—
- (a) 2 or more vehicles that do not have a statutory warranty are to be auctioned in consecutive lots; and
 - (b) immediately before the first vehicle is to be auctioned, the chattel auctioneer identifies the vehicles and announces that the identified vehicles do not have a statutory warranty.

Example—

Lots 10 to 25 are vehicles that do not have a statutory warranty. The chattel auctioneer does not contravene subsection (1) if, immediately before the auction of lot 10, the chattel auctioneer announces lots 10 to 25 are vehicles that do not have a statutory warranty.

- (3) Also, a chattel auctioneer must announce, immediately before the auction of any restorable vehicle that—
- (a) the vehicle is a restorable vehicle because it is more than 20 years old and is for sale for restoration; and
 - (b) it is a condition of the sale of a restorable vehicle that if the vehicle is sold, the registered bidder to whom it is sold is taken to waive the statutory warranty for the vehicle when the contract for its purchase is entered into; and
 - (c) the chattel auctioneer will not accept bids from a person who is not a registered bidder.

Maximum penalty—100 penalty units.

- (4) A chattel auctioneer does not contravene subsection (3) if—
- (a) 2 or more restorable vehicles are to be auctioned in consecutive lots; and
 - (b) immediately before the first of the vehicles in the consecutive lots is to be auctioned, the chattel auctioneer—
 - (i) identifies the vehicles; and
 - (ii) for the identified vehicles, announces the matters mentioned in subsection (3)(a), (b) and (c).

147A Effect of sale of restorable vehicle to registered bidder

If a restorable vehicle is sold to a registered bidder at auction, the statutory warranty for the vehicle stops having effect when the contract for the vehicle's purchase is entered into and the vehicle is taken to be an unwarranted vehicle.

Division 7 General

148 Licensee's disclosures to persons taking part in auction

A chattel auctioneer who conducts an auction must disclose the following information, in the way and for the period prescribed under a regulation, to persons taking part in the auction—

- (a) the chattel auctioneer's name;
- (b) any other particulars prescribed under a regulation.

Maximum penalty—100 penalty units.

Division 8 Particular offences

149 Acting as chattel auctioneer

- (1) A person must not perform an activity that may be done under the authority of a chattel auctioneer licence unless the person—
- (a) holds a chattel auctioneer licence and the performance of the activity is authorised under the person's licence; or
 - (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 chattel auctioneer unless—
- (a) the person holds a chattel auctioneer 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 chattel auctioneer, a person *acts* as a chattel auctioneer if the person—
- (a) performs an auction for the sale of goods; or
 - (b) advertises, notifies or states that the person performs auctions or is willing to perform auctions for the sale of goods; or
 - (c) in any way holds out as being ready to perform auctions for the sale of goods.

150 Chattel auctioneer must not act for more than 1 party

- (1) A chattel auctioneer must not act for more than 1 party to a transaction.

Maximum penalty—200 penalty units.

- (2) If a chattel auctioneer acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made.
- (3) If the transaction is a livestock sale—
 - (a) a chattel auctioneer does not contravene subsection (1); and
 - (b) subsection (2) does not apply.

Part 5 Registration of motor salespersons

Division 1 Categories of registration

151 Categories of registration certificate

- (1) The chief executive may issue the following categories of registration certificate under this Act—
 - (a) a registration certificate (*general registration certificate*) that authorises the performance of all the activities that may be performed under section 152 by the holder of the registration certificate;
 - (b) a registration certificate (*limited registration certificate*), prescribed under a regulation, that limits the activities that may otherwise be performed under a general registration certificate.
- (2) To be eligible for a limited registration certificate, an applicant for the certificate must have the educational or other qualifications approved by the chief executive for obtaining the certificate.

Editor's note—

The qualifications are stated on the department's website.

Division 2 Motor salespersons' authorisation

152 What a registration certificate authorises

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

Division 3 How to obtain registration

153 Steps involved in obtaining registration

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

Division 4 Applications for registration

154 Application for registration

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

155 Particular persons can not make application

- (1) A person who is a disqualified person can not make an application for a registration certificate during the period for which the person is disqualified.
- (2) If a person applies for a registration certificate and the chief executive decides to refuse to issue the registration certificate, the person can not make another application for a registration certificate—
 - (a) for 3 months after the day the chief executive gives the person the information notice about the decision; or

- (b) if the person applies to QCAT to review the decision and the decision is confirmed—for 3 months after the day the decision is confirmed.
- (3) In this section—
 - disqualified person* means a person who is—
 - (a) disqualified from holding a registration certificate as a consequence of an order made by QCAT under section 199 or by a court under section 229; or
 - (b) subject to a relevant control order.

156 Requirement to give chief executive information or material about application

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

Example of 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 5 Suitability of applicants

157 Suitability of applicants

- (1) A person is not a suitable person to hold a registration certificate 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 158 is not a suitable person to hold a registration certificate; or
 - (d) subject to a relevant control order.
- (2) An individual who is not a suitable person can not obtain registration as a motor salesperson.

158 Chief executive must consider suitability of applicants

- (1) The chief executive must, when deciding whether a person is a suitable person to hold a registration certificate, consider each of the following things—
 - (a) the person's character;
 - (b) whether the person held a licence or registration certificate 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 the holder of a licence or registration certificate within the meaning of the relevant Act;

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- (e) whether, within the previous 5 years, QCAT, the former tribunal or the District Court has made an order under this Act or PAMDA adverse to the person;
 - (f) the person's criminal history;
 - (g) 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 motor dealer's business;
 - (h) whether the person has been convicted of an offence against a relevant Act or the Administration Act;
 - (i) whether the person is subject to a relevant control order;
 - (j) whether the person is capable of satisfactorily performing the activities of a motor salesperson;
 - (k) whether the person's name appears in the register of persons disqualified from managing corporations under the Corporations Act;

Note—

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

- (l) another thing the chief executive may consider under this Act.
- (2) However, the chief executive, when deciding whether a person is a suitable person to hold a registration certificate, may not have regard to criminal intelligence given by the commissioner to the chief executive under section 230A.
 - (3) If the chief executive decides a person is not a suitable person to hold a registration certificate, the chief executive must give

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

(4) In this section—

fund includes the claim fund under PAMDA.

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

159 Investigations about suitability of applicants

- (1) The chief executive may make investigations about an applicant mentioned in section 156(1) or a motor salesperson to help the chief executive decide whether the applicant or motor salesperson is a suitable person to hold a registration certificate.
- (2) Without limiting subsection (1), the chief executive may ask the commissioner for a criminal history report about the applicant or motor salesperson.
- (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 report must be written.
- (6) If the person is, or has been, subject to a control order or registered corresponding control order, the report must—
 - (a) state the details of the order; or
 - (b) be accompanied by a copy of the order.

160 Notice of change in criminal history

- (1) This section applies if the commissioner 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—
 - (a) state the following details—
 - (i) the person's name and any other name the commissioner believes the person may use or may have used;
 - (ii) the person's date and place of birth;
 - (iii) a brief description of the nature of the offence giving rise to the conviction or charge to which the change relates; and
 - (b) if the change includes the person becoming subject to a control order or registered corresponding control order—
 - (i) state the details of the order; or
 - (ii) be accompanied by a copy of the order.
 - (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 an alleged offence.

161 Costs of criminal history report

- (1) The chief executive may require an applicant mentioned in section 156(1) or a motor salesperson to pay the reasonable, but no more than actual, costs of obtaining a criminal history report under section 159 for the applicant or motor salesperson.

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

applicant includes proposed applicant.

162 Use of information obtained under s 159 or s 160

- (1) Subsection (2) applies to the chief executive in considering information about a person obtained under section 159 or 160.
- (2) Information about the following may be used only for making a decision about whether an applicant or motor salesperson is,

or continues to be, a suitable person to hold a registration certificate—

- (a) a conviction of the person;
 - (b) if the person is subject to a control order or registered corresponding control order—the control order.
- (3) Subsection (4) applies to the chief executive in considering information about a person obtained under section 160.
- (4) Information about a charge against the person may not be relied on as a basis for making a decision as to whether the person is, or continues to be, a suitable person to hold a registration certificate.

Division 6 Eligibility for registration

165 Eligibility for registration as motor salesperson

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

Editor's 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—
- (a) the individual has a comparable qualification to the qualifications mentioned in subsection (1)(b); or
 - (b) within 2 years before the day the individual's application for registration is received by the chief executive, the individual held—

- (i) a registration certificate authorising the performance of activities at least equivalent to the activities that could be performed under the registration certificate being applied for, if it were issued; or
- (ii) a registration certificate as a motor salesperson granted under PAMDA.

Division 7 Issue of registration certificate

166 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 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 154; and
 - (d) any further information or material required by the chief executive under section 156 has been given within the reasonable period stated in the notice given under that section.
- (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.

167 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 condition, the chief executive must give the applicant an information notice about the decision within 14 days after making the decision.

Division 8 Renewal and restoration of registration certificates

Subdivision 1 Renewal

168 Application for renewal

- (1) A motor salesperson may only apply for renewal of the motor 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 motor salesperson—the amount of the costs required to be paid.

169 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 motor salesperson is a suitable person to obtain the registration; and
 - (b) the application is made under section 168(2); and
 - (c) the motor salesperson meets the eligibility requirements, other than eligibility requirements of an educational nature, for the certificate.
- (3) If the chief executive decides to refuse to renew the registration certificate, the chief executive must give the employee an information notice about the decision within 14 days after making the decision.

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

If an application is made under section 168, the motor salesperson's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the salesperson's application for renewal is—

- (a) decided under section 169; or
- (b) withdrawn by the salesperson; or
- (c) taken to have been withdrawn under section 156(3).

Subdivision 2 Restoration

171 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, 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.

172 Chief executive may restore or refuse to restore registration certificate

- (1) The chief executive must consider the application for restoration and 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 to obtain registration; and
 - (b) the application is made under section 171(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 to restore the registration certificate, the chief executive must give the person an information notice about the decision within 14 days after making the decision.
- (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 170, 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 certificate is restored under this section is taken to have been as validly done as it would have been if the certificate had been renewed immediately before the initial expiry date.

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

If an application is made under section 171, the person's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the application for restoration is—

- (a) decided under section 172; or
- (b) withdrawn by the person; or
- (c) taken to have been withdrawn under section 156(3).

Division 9 Dealings with registration certificates

Subdivision 1 Transfer of registration certificate

174 Transfer of registration certificate prohibited

A registration certificate may not be transferred.

175 Offence to sell, lend or borrow registration certificate

- (1) A motor 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 another person, whether or not the other person is registered as a motor salesperson; or
 - (c) permit or allow someone else to hold out that the person is the holder of the motor salesperson's registration certificate.

Maximum penalty—200 penalty units or 2 years imprisonment.

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

Maximum penalty—200 penalty units or 2 years imprisonment.

Subdivision 2 General

176 Amendment of registration certificate conditions

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

- (a) on the motor 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 199.

- (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 motor salesperson meets the eligibility requirements the chief executive considers relevant to the amendment of the condition.
- (4) Before making an amendment under subsection (1)(c), the chief executive must—
 - (a) give written notice to the motor salesperson—
 - (i) of the particulars of the proposed amendment; and
 - (ii) that the motor salesperson may make written submissions to the chief executive about the proposed amendment before a stated day not later than 14 days after the notice is given to the motor salesperson; and
 - (b) have regard to submissions made to the chief executive by the motor salesperson before the stated day.
- (5) Subsection (4) does not apply if the chief executive decides that the amendment must be made urgently to ensure compliance with this Act or the Administration Act.
- (6) If the chief executive decides to amend the conditions of a registration certificate under subsection (1)(c), the chief executive must give the motor salesperson an information notice about the decision within 14 days after making the decision.
- (7) The amendment takes effect—

- (a) on the day the written notice of the amendment is given to the motor 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 motor salesperson an information notice about the decision within 14 days after making the decision.

177 Return of registration certificate for amendment or replacement

- (1) The chief executive may require a motor salesperson to produce the salesperson's registration certificate for amendment or replacement within a stated period of not less than 14 days if the chief executive intends to—
- (a) amend the conditions of the certificate under section 176; or
 - (b) replace the certificate under section 186(5).
- (2) The motor salesperson must comply with the requirement, unless the person has a reasonable excuse.

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

178 Return of registration certificate for suspension or cancellation

- (1) A person whose registration certificate has been suspended or cancelled under section 229(1) or an order made by QCAT must return the certificate to the chief executive within 14 days after the suspension or cancellation unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply if section 180(5) or 181(2) applies.

179 Surrender of registration certificate

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

Division 10 Suspension and cancellation of registration certificates

180 Immediate suspension

- (1) This section applies if the chief executive believes, on reasonable grounds, that—
 - (a) a motor salesperson's registration certificate, or a renewal or restoration of the registration certificate, was obtained because of materially incorrect or misleading information; or
 - (b) both—
 - (i) an irregularity or deficiency exists in a motor dealer's trust account; and
 - (ii) a motor salesperson employed by the motor dealer may be responsible for the irregularity or deficiency; or
 - (c) a motor 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 motor 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 motor salesperson an information notice about the decision to suspend the motor salesperson's registration within 14 days after the suspension.
- (5) The motor salesperson must return the certificate to the chief executive within 14 days after the motor salesperson receives the notice, unless the motor salesperson has a reasonable excuse.

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

181 Immediate cancellation

- (1) A motor salesperson's registration certificate is cancelled if the salesperson—
 - (a) is convicted of a serious offence; or
 - (b) becomes subject to a relevant control order.
- (2) The motor salesperson must return the registration certificate to the chief executive within 14 days after the happening of an event mentioned in subsection (1), unless the salesperson has a reasonable excuse.

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

Division 11 General provisions about employee registration

183 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 a 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 motor salesperson;
 - (b) the date of issue of the certificate;
 - (c) the expiry date of the certificate;
 - (d) other particulars prescribed under a regulation.

184 Requirement to keep copy of registration certificate available for inspection

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

Maximum penalty—100 penalty units.

185 Term of registration certificate

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

186 Replacement certificates

- (1) A motor 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 and be accompanied by the fee prescribed under a regulation.
- (3) The chief executive must grant the application if the chief executive is satisfied the original certificate has been lost,

stolen or destroyed, or damaged in a way to require its replacement.

- (4) If the chief executive grants the application made under subsection (1), the chief executive must issue another registration certificate to the applicant to replace the original certificate.
- (5) The chief executive may also replace a registration certificate if—
 - (a) either—
 - (i) the holder of the certificate has given written notice to the chief executive of a prescribed change; or
 - (ii) the chief executive reasonably believes a prescribed change for the holder of the certificate has happened; and
 - (b) the chief executive is satisfied the prescribed change requires a replacement of the certificate.
- (6) If the chief executive replaces a registration certificate under this section—
 - (a) the certificate continues to be subject to the same conditions and term that the certificate was subject to before being replaced; and
 - (b) the holder of the certificate must pay the chief executive the fee prescribed under a regulation.
- (7) In this section—

prescribed change means a prescribed change under section 188.

187 Register of registration certificates

- (1) The chief executive must keep a register of registration certificates and applications for registration certificates (the *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; and
 - (iv) the category of the registration certificate being applied for;
 - (b) for each motor salesperson—
 - (i) the motor salesperson's name; and
 - (ii) the dates of issue and expiry of the motor salesperson's current registration certificate; and
 - (iii) the category of the registration certificate; and
 - (iv) any conditions imposed on the certificate; and
 - (v) the motor salesperson's registration certificate number; and
 - (vi) particulars of any surrender, suspension or cancellation of the motor 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 any way the chief executive considers appropriate.
- (7) In this section—
- contain*** includes record and store.

188 Motor salespersons to notify chief executive of changes in circumstances

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

Maximum penalty—100 penalty units.

- (2) In this section—

prescribed change means a change prescribed under a regulation.

189 Production of registration certificate

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

Maximum penalty—100 penalty units.

190 Pretending to be motor salesperson

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

Maximum penalty—200 penalty units.

- (2) In this section—

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

Part 6 Trust accounts

191 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,

[s 192]

when performing the activities of a motor dealer or chattel auctioneer.

Maximum penalty—200 penalty units or 2 years imprisonment.

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

(3) 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.

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

Part 7 Proceedings

Division 1 Preliminary

192 Definitions for part

In this part—

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

motor salesperson includes a person who was a motor salesperson at any time within 1 year before a proceeding under this part is started involving the person.

193 Jurisdiction

For this Act, QCAT has the following jurisdiction—

- (a) to hear and decide disciplinary matters involving a licensee or a motor salesperson;
- (b) to review decisions of the chief executive relating to licensing and registration.

Division 2 Disciplinary proceedings

194 Grounds for starting disciplinary proceedings

- (1) The following are grounds for starting a disciplinary proceeding against a licensee or motor salesperson—
 - (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) a prescribed conduct provision; or
 - (iii) the Administration Act; or
 - (iv) an undertaking given under part 8, division 2; or
 - (v) a corresponding law;
 - (c) the licensee or salesperson has been disqualified from holding an authorisation, similar to a licence or registration certificate, under a corresponding law;

- (d) an amount has been paid from the fund because the licensee or salesperson did, or omitted to do, something that gave rise to a claim against the fund;
- (e) the licensee or salesperson fraudulently or improperly obtained, or helped someone else to fraudulently or improperly obtain, a licence or registration certificate;
- (f) the licensee or salesperson has failed to comply with an order made by a court, the former tribunal or QCAT;
- (g) for a licensee—
 - (i) the licensee is not a suitable person to hold a licence; or
 - (ii) the licensee has carried on, or is carrying on, business under a licence with someone who is not a suitable person to hold a licence; or
 - (iii) the licensee has, in carrying on a business or performing an activity, been incompetent or acted in an unprofessional way; or
 - (iv) the licensee has failed to ensure that the licensee's employed licensees or motor salespersons, or employees under the licensee's supervision—
 - (A) are properly supervised in the performance of their duties; or
 - (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 against whom QCAT finds grounds exist to take disciplinary action under section 199; or
 - (vii) if the licensee is a corporation—
 - (A) an executive officer of the corporation is not a suitable person to be an executive officer of a corporation; or

- (B) an executive officer of the corporation is disqualified under this Act from being an executive officer of a corporation;
- (h) for a motor salesperson—
 - (i) the salesperson is not eligible to be employed as a motor 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.

195 Starting disciplinary proceedings

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

Division 3 Review proceedings

196 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 2 may apply to QCAT to have the decision reviewed.

197 Stay of operation of decisions

- (1) A decision of the chief executive, other than a decision made under section 61 or 180, being reviewed is stayed for the purpose of securing the effectiveness of the review.
- (2) However, the period of a stay does not extend past the time when QCAT decides the application.

198 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 4 QCAT's orders

199 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) an order that the person's licence or registration certificate be suspended for the period stated in the order;
 - (e) an order—
 - (i) if the person is the holder of a licence or registration certificate when the order is made—that the licence or registration certificate be cancelled; or
 - (ii) whether or not the person is the holder of a licence or registration certificate when the order is made—that the person be disqualified permanently, or for the period stated in the order, from holding a licence or registration certificate;
 - (f) an order imposing conditions on, or amending or revoking the conditions of, the person's licence or registration certificate;
 - (g) another order QCAT considers appropriate to ensure the person complies with this Act.
- (2) QCAT may not make an order under subsection (1)(e)(ii) disqualifying the person from holding a licence or registration certificate if QCAT is satisfied that a court has, in relation to the matter giving rise to the disciplinary proceeding—
- (a) been asked to make an order under section 229(1) or (4) disqualifying the person from holding a licence or registration certificate; and
 - (b) declined to do so.
- (3) If QCAT makes an order under subsection (1)(e)(i) in relation to an individual that a licence or registration certificate be cancelled, QCAT must also order that the person be disqualified, for the period stated in the order, from holding a licence of the type to which the order relates or a registration certificate.

- (4) The chief executive may recover a fine, ordered by QCAT to be paid by the person to the chief executive, as a debt owing to the chief executive in a court with jurisdiction to recover debts up to the amount of the fine.

200 Stopping contraventions

- (1) This section applies if QCAT is satisfied, on application by the chief executive, that a person is doing or is about to do something in contravention of this Act.
- (2) QCAT may, by order, prohibit the person who is doing or is about to do the thing (the *prohibited person*) from starting or continuing to do the thing.
- (3) QCAT may make an order under this section on the chief executive's application made without notice to the prohibited person but, in that case, QCAT must allow the prohibited person a reasonable opportunity to show cause why the order should not be confirmed.
- (4) QCAT must rescind the order if it is not satisfied the order should continue in force, after considering—
 - (a) the prohibited person's evidence and submissions, if any; and
 - (b) any further evidence or submissions of the chief executive.
- (5) A person must not contravene an order under this section.
Maximum penalty—540 penalty units.
- (6) An order under this section has effect on the giving of a copy of the order to the prohibited person.

Division 5 Chief executive's right of appeal

201 Appeal

- (1) The chief executive may appeal to the appeal tribunal against any decision of QCAT under this Act, but only on the ground of error of law.
- (2) In this section—
appeal tribunal means QCAT as constituted under the QCAT Act, section 166 for the purposes of an appeal.

Part 8 Injunctions and undertakings

Division 1 Injunctions

204 Grounds for injunction

The District Court may grant an injunction against a person if the court is satisfied that 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 a person to contravene this Act or a prescribed conduct provision; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act or a prescribed conduct provision; or

- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act or a prescribed conduct provision; or
- (f) conspiring with others to contravene this Act or a prescribed conduct provision.

205 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.

206 When injunction may be granted

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

207 Court's powers for injunctions

- (1) The power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised—
 - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind.
- (2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—
 - (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and
 - (b) whether or not the person 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.

208 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 person from carrying on a business as a licensee (whether or not the person is licensed or the business is carried on as part of, or incidental to, the carrying on of another business)—
 - (a) for a stated period; or
 - (b) except on stated terms and conditions.
- (3) Also, the court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person's contravention of this Act or a prescribed conduct provision.

209 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

210 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) for a contravention that is conduct consisting of a series of acts or omissions, the person stops the conduct; and
 - (c) the person does not repeat the act or omission; and
 - (d) the chief executive accepts the undertaking.
- (3) Subsection (2) does not apply if the chief executive withdraws the undertaking under section 212.

211 Undertaking about other matter

Without limiting section 210, the chief executive may accept an undertaking given by a person about anything for which the chief executive or an inspector has a function or power.

Example of type of undertaking for this section—

an undertaking to publish corrective advertising

212 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 that—

- (i) 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 who gave it written notice of its variation or withdrawal.
- (4) The variation or withdrawal takes effect when written notice of the variation or withdrawal is received by the person.

213 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 someone else who has suffered loss or damage because of the contravention;
 - (d) an order directing the person to give a security bond to the State for a stated period;

- (e) another order the court considers appropriate.
- (3) The District Court may order the forfeiture to the State of all or part of a security bond given by a person under subsection (2)(d) if—
 - (a) the chief executive applies to the court for the order; and
 - (b) the court is satisfied that the person contravened the undertaking during the period for which the bond was given.

214 Register of undertakings

- (1) The chief executive must keep a register of undertakings under this division.
- (2) The register must contain a copy of each undertaking.
- (3) The chief executive may publish 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) 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.

Part 9 **General contraventions and evidentiary matters**

Division 1 **General contraventions**

215 Wrongful conversion and false accounts

- (1) This section applies if a licensee, in the performance of the activities of a licensee, or a motor salesperson, in the performance of the activities of a motor salesperson—
 - (a) receives an amount belonging to someone else; or
 - (b) falsely accounts for money.
- (2) A licensee or motor salesperson who—
 - (a) dishonestly converts the amount to the licensee’s or salesperson’s own or someone else’s use; or
 - (b) dishonestly renders an account of the amount knowing it to be false in a material particular;

commits a crime.

Maximum penalty—1,000 penalty units or 5 years imprisonment.

- (3) For a prosecution under subsection (2)(a), it is enough for the prosecution to prove that the licensee or motor 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 that the amount belonged to a particular person.
- (4) If conduct alleged to constitute an offence under subsection (2) is recurrent so that, apart from 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 motor salesperson in the performance of the activities of a licensee or motor 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 had not in fact received the amount.

Maximum penalty—540 penalty units.

- (6) In this section—

former licensee means a person who held—

- (a) a licence under this Act; or
- (b) a motor dealer's licence or former auctioneers licence under PAMDA.

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

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.

216 False representations about goods

- (1) A licensee or motor salesperson must not represent in any way to someone else anything that is false or misleading about the sale or auction of goods.

Maximum penalty—540 penalty units.

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

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- (5) It is not a defence in a proceeding for a contravention of subsection (1) for the defendant to prove that an agreement with the person was terminated or that the person did not enter into an agreement because of the representation.
 - (6) This section does not limit another Act or law about false or misleading representations.

Note—

See, for example, the Australian Consumer Law, section 29.

- (7) In this section—

false or misleading, in relation to 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.

217 Chief executive's power to ask for substantiation of representations

- (1) This section applies if the chief executive believes, on reasonable grounds, that a licensee or motor salesperson has made a representation in contravention of section 216(1).
- (2) The chief executive may, by written notice, ask the person to give to the chief executive written proof that supports 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 for the failure to comply.
- (4) The person must respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to comply.

Maximum penalty—100 penalty units.

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

218 False representations about mileage

A person must not wilfully represent in any way to someone else anything that is false or misleading about the total distance travelled by a motor vehicle.

Maximum penalty—540 penalty units.

219 Tampering with odometers

- (1) A person must not tamper with or replace a motor vehicle's odometer with intent to falsely represent that, at a particular time, the vehicle—

- (a) has travelled a distance less than a specified distance; or
- (b) has travelled a distance more than a specified distance.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) If a court finds a person guilty of an offence against subsection (1), the court may, on its own initiative or on the application of the prosecution or a person who has suffered loss, order the person who committed the offence to compensate the person who suffered loss for loss resulting from the commission of the offence.
- (3) In any proceeding, the distance shown at any time on the odometer tampered with or replaced is evidence of a false representation by the person who tampered with or replaced the odometer that the vehicle—
 - (a) has travelled a distance less than a specified distance shown on the odometer; or
 - (b) has travelled a distance more than a specified distance shown on the odometer.

- (4) Subsection (2) does not limit a court's powers under the *Penalties and Sentences Act 1992* or any other law.

220 Offence to charge fee for providing documents etc.

- (1) A licensee or a motor salesperson must not charge a fee for the provision, preparation or completion of a document that is authorised or required to be provided, prepared or completed under the Act.

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.

221 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.

222 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.

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- (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.

Division 2 Evidentiary matters

223 Evidence of tampering by a motor dealer or chattel auctioneer

- (1) Evidence that a motor vehicle's odometer reading when the vehicle was in the possession of a motor dealer or chattel auctioneer was less than its reading when the dealer or chattel auctioneer took possession of the vehicle is evidence that—
- (a) the motor vehicle's odometer was tampered with or replaced; and
 - (b) the dealer or chattel auctioneer contravened section 219(1)(a).
- (2) Evidence that a motor vehicle's odometer was tampered with or replaced to increase the distance shown on the odometer when the vehicle was in a motor dealer's or chattel auctioneer's possession is evidence that the dealer or chattel auctioneer contravened section 219(1)(b).
- (3) In this section—
possession, of a motor vehicle, includes custody and control of the vehicle.

224 Continuing false representation—tampered with odometer

- (1) This section applies, in any proceeding, if there is evidence (*relevant evidence*) that a person intentionally tampered with or replaced the odometer of a motor vehicle so that it showed that the vehicle at that time—

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- (a) had not travelled the distance shown on the odometer before it was tampered with; or
 - (b) had travelled more than the distance shown on the odometer before it was tampered with.
- (2) The distance shown at any time afterwards on the odometer is evidence of a false representation by a person at that later time that—
- (a) if the relevant evidence relates to subsection (1)(a)—the vehicle had not travelled more than the distance shown on the odometer; or
 - (b) if the relevant evidence relates to subsection (1)(b)—the vehicle had travelled more than the distance shown on the odometer.

225 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 is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by the chief executive, a member of QCAT or the registrar stating any of the following matters is evidence of the matter—
 - (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.
- (5) In this section—
registrar means the principal registrar under the QCAT Act.

226 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 that the entry has been made by or with the authority of the licensee.

Division 3 Proceedings

227 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.

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

228 Responsibility for acts or omissions of representatives

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
 - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

offence includes a contravention of this Act for which an amount may be ordered by the District Court or QCAT to be paid as a money penalty.

representative means—

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

state of mind, of a person, includes—

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

229 Power of court

- (1) A court may, in addition to any other penalty it may impose, order that a licensee's licence or a motor salesperson's registration certificate be suspended for a stated period or cancelled if the licensee or motor salesperson has been convicted of an offence against this Act.
- (2) Subsection (3) applies if—
 - (a) the court orders that a licensee's licence be cancelled and the licensee is an individual; or
 - (b) the court orders a motor salesperson's registration certificate be cancelled.
- (3) The court must also order that the licensee or motor salesperson be disqualified for a stated period or permanently from holding a licence or registration certificate.
- (4) The court may also order that a person convicted of an offence against this Act be disqualified from holding a licence or registration certificate under this Act for a stated period or permanently.
- (5) The court may make an order under subsection (1) or (4)—
 - (a) on the chief executive's application; or
 - (b) on its own initiative.
- (6) If an order is made by a court under this section on the court's own initiative, the court must cause a copy of the order to be given to the chief executive.

230 Allegations of false or misleading representations or statements etc.

In any proceeding for an offence against this Act involving a false or misleading statement, representation or entry, or false or misleading information, it is enough for a charge to state that the statement, representation, entry or information was 'false or misleading'.

Part 10 General

230A Exchange of information

- (1) The chief executive may enter into an arrangement (an *information-sharing arrangement*) with a relevant agency for the purposes of sharing or exchanging information—
 - (a) held by the chief executive or the relevant agency; or
 - (b) to which the chief executive or the relevant agency has access.
- (2) An information-sharing arrangement may relate only to information that assists—
 - (a) the chief executive perform the chief executive's functions under this Act; or
 - (b) the relevant agency perform its functions.
- (3) Under an information-sharing arrangement, the chief executive and the relevant agency are, despite another Act or law, authorised to—
 - (a) ask for and receive information held by the other party to the arrangement or to which the other party has access; and
 - (b) disclose information to the other party.
- (4) The chief executive may use criminal intelligence, given to the chief executive by the commissioner under an information-sharing arrangement, only for monitoring compliance with this Act.
- (5) In this section—

information does not include information given to the chief executive or a relevant agency, or to which the chief executive or relevant agency has access, under the *Crime and Corruption Act 2001*.

relevant agency means the following—

 - (a) the commissioner;

- (b) the chief executive of a department;
- (c) a local government;
- (d) a person prescribed by regulation.

230B Confidentiality

- (1) This section applies if a person gains confidential information through involvement in the administration of this Act.
- (2) The person must not make a record of the information or disclose the information to another person, other than under subsection (4).

Maximum penalty—35 penalty units.

- (3) Without limiting subsection (1), a person gains confidential information through involvement in the administration of this Act if the person gains the information because of being, or an opportunity given by being—
 - (a) the chief executive; or
 - (b) a public service employee employed in the department; or
 - (c) a person engaged by the chief executive for this Act.
- (4) A person may make a record of confidential information or disclose it to another person—
 - (a) for this Act; or
 - (b) to discharge a function under another law; or
 - (c) for a proceeding in a court or QCAT; or
 - (d) if authorised by a court or QCAT in the interests of justice; or
 - (e) if required or permitted by law; or
 - (f) for information other than criminal intelligence—if the person is authorised in writing by the person to whom the information relates.

- (5) The chief executive must destroy the following as soon as practicable after it is no longer needed for the purpose for which it was requested or given—
 - (a) a criminal history report about a person;
 - (b) a copy of a control order or registered corresponding control order accompanying a criminal history report about a person;
 - (c) a notice given under section 27(2) or 160(2) about a person.
- (6) The *Public Records Act 2002* does not apply to the documents mentioned in subsection (5).
- (7) In this section—

confidential information—

 - (a) includes information about a person’s affairs; but
 - (b) does not include statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

231 Public warning statements

- (1) The Minister or chief executive may make or issue a public statement identifying and giving warnings or information about any of the following—
 - (a) contraventions of a prescribed conduct provision that have resulted in disciplinary action and persons who commit the contraventions;
 - (b) business practices regulated under this Act that are unfair and persons who engage in the unfair practices;
 - (c) the commission of offences against this Act and 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 that it is in the public interest to do so.

232 Civil remedies not affected

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

233 Criminal Proceeds Confiscation Act 2002 not limited

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

234 Delegation—chief executive

The chief executive may delegate the chief executive's powers, other than power under section 231, to an appropriately qualified public service employee.

235 Approved forms

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

236 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made about the following—
- (a) matters relating to the conduct of—
 - (i) motor dealing practice by a motor dealer or motor salesperson; or
 - (ii) chattel auctioneering practice by a chattel auctioneer;

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- (b) fees, including the refunding of fees payable under this Act and the discounts for persons applying for more than 1 licence under this Act, the Agents Acts, or both;
- (c) the amounts of fees that may be charged for transactions by licensees;
- (d) imposing penalties for contraventions of regulations of not more than 20 penalty units;
- (e) the keeping or destruction of motor vehicle identifiers;
- (f) the display at a motor dealer's registered office of the motor dealer's usual hours of business;
- (g) imposing time limits within which a del credere agent must pay the purchase price of livestock the agent is authorised to sell to the seller of the livestock;
- (h) the financial or insurance protection requirements for del credere agents;
- (i) imposing limits on out-of-pocket expenses incurred in the performance of activities under licences;
- (j) the keeping of records, including the form in which a record is kept;
- (k) the keeping of receipts and evidence of expenditure;
- (l) the period for which documents required to be kept under this Act are to be kept.

Part 11 Transitional provisions

Division 1 Transitional provisions for repeal of PAMDA

237 Transitional provisions for repeal of PAMDA

- (1) This section is included for information purposes only.

- (2) The *Property Occupations Act 2014*, part 14 includes provisions of a saving or transitional nature about particular matters arising from the repeal of PAMDA, including, for example, provisions providing for the following—
- (a) continuation of motor dealer’s licences under PAMDA as motor dealer licences under this Act;
 - (b) continuation of registration certificates as motor salespersons under PAMDA as registration certificates under this Act;
 - (c) continuation of particular licences or registration certificates under PAMDA as chattel auctioneer licences under this Act;
 - (d) dealing with undecided applications for motor dealer’s licences under PAMDA as applications for motor dealer licences under this Act;
 - (e) dealing with undecided applications for registration certificates as motor salespersons under PAMDA as applications for registration as motor salespersons under this Act;
 - (f) dealing with undecided applications for particular licences or registration certificates under PAMDA as applications for chattel auctioneer licences under this Act;
 - (g) dealing with undecided applications for particular expired licences or expired registration certificates under PAMDA;
 - (h) continuation of reviews of decisions under PAMDA;
 - (i) dealing with a person’s conduct before the commencement of a kind regulated by this Act;
 - (j) continuation of statutory warranties for used motor vehicles under PAMDA.

Division 2 **Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2016**

238 **Definitions for division**

In this division—

repealed, in relation to a provision of this Act, means the provision as in force immediately before the commencement.

239 **Applications not finally decided**

- (1) This section applies if, immediately before the commencement, the chief executive had not finally decided an application for—
 - (a) the issue, renewal or restoration of a licence or registration certificate; or
 - (b) the appointment, or the extension of the appointment, of an adult as the licensee’s substitute licensee.
- (2) The chief executive must decide the application under this Act as in force after the commencement.

240 **Proceedings not finally decided**

- (1) This section applies if immediately before the commencement the following proceedings had been started but not finally dealt with—
 - (a) a disciplinary proceeding under section 195 against a licensee or motor salesperson;
 - (b) a proceeding before QCAT for a review of a decision mentioned in repealed section 202(1);
 - (c) a proceeding before the Supreme Court about a decision mentioned in repealed section 202(1).

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- (2) For a proceeding mentioned in subsection (1)(a), QCAT must decide the proceeding under this Act as in force after the commencement.
 - (3) For a proceeding mentioned in subsection (1)(b) or (c)—
 - (a) the proceeding is discontinued; and
 - (b) the matter is remitted to the chief executive for the chief executive to decide again under this Act as in force after the commencement.
 - (4) QCAT or the Supreme Court must return to the commissioner any criminal intelligence relating to the proceeding in QCAT's or the Supreme Court's possession or control.
 - (5) For subsection (1), a proceeding had not been finally dealt with if—
 - (a) QCAT or the Supreme Court had not made a decision; or
 - (b) QCAT or the Supreme Court had made a decision but the appeal period for the decision had not ended; or
 - (c) QCAT or the Supreme Court had made a decision and an appeal against the decision had started but not ended.
 - (6) In this section—

criminal intelligence means criminal intelligence within the meaning of repealed section 202(6).

241 Reapplying for licences and registration certificates

- (1) Subsection (2) applies if, before the commencement, 1 of the following decisions was made only because of advice given by the commissioner to the chief executive under repealed section 30(3) or 163(2)—
 - (a) a decision to refuse to issue a licence;
 - (b) a decision to refuse to issue a registration certificate.
- (2) The decision is taken not to be a decision to refuse to issue the licence or registration certificate for section 19(3) or 155(2).

- (3) Subsection (4) applies if a licence held by a corporation was, before the commencement, cancelled only because of advice given by the commissioner to the chief executive under repealed section 30(3).
- (4) Despite section 19(2), the corporation may make an application for a licence.

Schedule 1 Statutory warranty provisions

sections 115 and 145

Part 1 Preliminary

1 Definitions for sch 1

In this schedule—

built date see section 3C(1).

class A warranted vehicle see section 3A.

class B warranted vehicle see section 3B.

defect see section 2.

defect notice see section 9(1).

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

repair period see section 12(2).

statutory warranty means the warranty under section 7.

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

warranted vehicle see section 3.

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

Examples—

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

warranty advice see section 11(2).

warranty period see section 4.

2 Meaning of *defect*

A warranted vehicle has a *defect* for this schedule if—

- (a) a part of the vehicle does not perform its intended function; or
- (b) a part of the vehicle has deteriorated to an extent where it can not reasonably be relied on to perform its intended function.

3 Meaning of *warranted vehicle*

A *warranted vehicle* is a used motor vehicle other than—

- (a) an unregistered motor vehicle that is—
 - (i) incapable of being registered in Queensland because of its design; or
 - (ii) a written-off vehicle; or
- (b) a motor vehicle sold on consignment, unless the owner of the vehicle is a licensee; or
- (c) a commercial vehicle; or
- (d) a caravan; or
- (e) a motorcycle.

3A Meaning of *class A warranted vehicle*

A *class A warranted vehicle* is a warranted vehicle that—

- (a) on the day of its sale, has an odometer reading of less than 160,000km; and
- (b) has a built date of no more than 10 years before the day of its sale.

3B Meaning of *class B warranted vehicle*

A *class B warranted vehicle* is a warranted vehicle that—

- (a) on the day of its sale, has an odometer reading of 160,000km or more; or

-
- (b) has a built date of more than 10 years before the day of its sale.

3C Meaning of *built date*

- (1) Subject to subsection (2), for sections 3A(b) and 3B(b), the *built date* of a warranted vehicle is—
- (a) if the date the vehicle was manufactured is shown on the vehicle—that date; or
 - (b) if paragraph (a) does not apply—the date stamped or printed on the vehicle’s identification plate; or
 - (c) if neither paragraph (a) or (b) applies—the date of manufacture of the vehicle entered for the vehicle in the register of approved vehicles under the *Road Vehicle Standards Act 2018* (Cwlth).
- (2) For a date under subsection (1)(a), (b) or (c) that refers only to a month in a particular year, the date for the paragraph is taken to be the first day of the next month.
- (3) In this section—
- identification plate* has the meaning given by the repealed *Motor Vehicle Standards Act 1989* (Cwlth).
- shown*, on a vehicle, means—
- (a) stamped on—
 - (i) a metal component of the vehicle; or
 - (ii) a plate, other than an identification plate, affixed to the vehicle; or
 - (b) printed on a label, other than an identification plate, affixed to the vehicle.

4 Meaning of *warranty period*

- (1) Subject to subsection (3), the *warranty period* of a class A warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached—

Schedule 1

- (a) the vehicle travels 5,000km since the time of taking possession;
 - (b) 5p.m. on—
 - (i) the day 3 months after the time of taking possession if—
 - (A) that day is not a Sunday or public holiday; and
 - (B) on that day the warrantor’s place of business is open for business; or
 - (ii) the first day, after the day 3 months after the time of taking possession, that—
 - (A) is not a Sunday or public holiday; and
 - (B) the warrantor’s place of business is open for business.
- (2) Subject to subsection (3), the *warranty period* of a class B warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached—
- (a) the vehicle travels 1,000km since the time of taking possession;
 - (b) 5p.m. on—
 - (i) the day 1 month after the time of taking possession if—
 - (A) that day is not a Sunday or public holiday; and
 - (B) on that day the warrantor’s place of business is open for business; or
 - (ii) the first day, after the day 1 month after the time of taking possession, that—
 - (A) is not a Sunday or public holiday; and
 - (B) the warrantor’s place of business is open for business.

-
- (3) The warranty period under subsection (1) or (2) is extended by 1 day for each day or part of a day the warranted vehicle is not in the possession of the buyer of the vehicle if—
- (a) the buyer has complied with section 9(1); and
 - (b) a defect in the vehicle is being repaired by, or at the direction of, the warrantor of the vehicle under the statutory warranty.

5 Application of sch 1

- (1) This schedule applies to each warranted vehicle sold by a licensee—
- (a) as the owner of the vehicle; or
 - (b) on consignment for another licensee.
- (2) However, this schedule does not apply to the sale of a motor vehicle by a licensee to—
- (a) another licensee; or
 - (b) a person holding a licence, however described, under a corresponding law that is similar to a licence under this Act.

Part 2 Provisions about statutory warranty

Division 1 General

6 Licensee must give buyer notice about statutory warranty

- (1) A licensee who sells a warranted vehicle must give the buyer of the vehicle a notice in the approved form—
- (a) if the vehicle is sold by auction—immediately after the contract for its purchase is entered into; or

- (b) otherwise—before a contract for its purchase is entered into.

Maximum penalty—100 penalty units.

- (2) The buyer must acknowledge receipt of the notice by signing a copy of it.
- (3) A reference in subsection (1) to the *buyer* of a warranted vehicle that is sold other than by auction includes a reference to the buyer as the proposed buyer of the vehicle before it is sold.

7 Statutory warranty

- (1) The warrantor of a warranted vehicle warrants that—
 - (a) the vehicle is free from defects at the time of taking possession and for the warranty period; and
 - (b) defects in the vehicle reported during the warranty period will be repaired by the warrantor free of charge.
- (2) In this section—

defects does not include defects not covered by the statutory warranty.

8 Defects not covered by statutory warranty

The following defects in a warranted vehicle are not covered by the statutory warranty—

- (a) a defect in the vehicle’s paintwork or upholstery that should have been apparent on any reasonable inspection of the vehicle before the time of taking possession;
- (b) a defect after the time of taking possession—
 - (i) arising from or incidental to any accidental damage to the vehicle; or
 - (ii) arising from the buyer’s misuse or negligence; or
 - (iii) in an accessory to the vehicle not fitted to the vehicle when sold to the buyer;

- (c) a defect in something else prescribed by regulation.

9 Buyer's obligations under statutory warranty

- (1) If the buyer of a warranted vehicle believes the vehicle has a defect the warrantor of the vehicle is obliged to repair under this part, the buyer must give the warrantor written notice of the defect (*defect notice*) before the end of the warranty period and—
- (a) if the warranted vehicle is 200km or less from the warrantor's place of business when the defect notice is given—deliver the vehicle to—
- (i) the warrantor to repair the defect; or
- (ii) a qualified repairer nominated by the warrantor, by signed writing given to the buyer of the vehicle, to repair the defect; or
- (b) if the warranted vehicle is more than 200km from the warrantor's place of business when the defect notice is given—
- (i) deliver the warranted vehicle to the qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle and nearest to the vehicle to repair the defect; or
- (ii) deliver, at the warrantor's expense, the warranted vehicle to another qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect.
- (2) The buyer is taken to deliver the vehicle and the warrantor is taken to have possession of the vehicle if the buyer makes reasonable efforts to deliver the vehicle under this section but is unable to do so because the warrantor, or the qualified repairer nominated by the warrantor, refuses to accept delivery of the vehicle.
- (3) The place of delivery under subsection (1)(a)(ii) must not be more than 20km from the warrantor's place of business, unless the warrantor and the buyer otherwise agree.

(4) In this section—

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

warrantor includes someone apparently working for the warrantor at the warrantor's place of business.

10 Warrantor to record particulars of extension of warranty period

The warrantor must keep a record, in the way prescribed under a regulation, of the day the warranted vehicle is delivered to the warrantor or nominated qualified repairer under section 9 and the day the vehicle is returned to the buyer.

Maximum penalty—100 penalty units.

11 Warrantor to advise whether defect covered by statutory warranty

- (1) This section applies if a defect notice is given, and the vehicle is delivered, under section 9.
- (2) The warrantor must advise the buyer in writing (*warranty advice*) whether the warrantor accepts or refuses to accept that the defect is covered by the statutory warranty.
- (3) If the warrantor fails to give the warranty advice within 5 business days after receiving the defect notice and delivery of the vehicle, the warrantor is taken to have given a warranty advice accepting that the defect is covered by the statutory warranty.

(4) In this section—

business day, for the giving of a warranty advice by a warrantor, means a day, other than Sunday or a public holiday, when the warrantor's place of business is open for business.

12 Warrantor's obligation to repair defects

- (1) If the warrantor accepts that the defect in the vehicle is covered by the statutory warranty, the warrantor must repair the defect at the warrantor's expense.
- (2) The warrantor must ensure that the defect is repaired within 14 days after the warrantor accepts that the defect is covered by the statutory warranty (*repair period*), unless the warrantor has a reasonable excuse.

Maximum penalty—200 penalty units.

- (3) The warrantor—
 - (a) must, if the warrantor stops carrying on the business, or performing the activities, of a licensee, nominate someone else to repair the defect; and
 - (b) may otherwise nominate someone else to repair the defect.
- (4) If the warrantor nominates a person to repair the defect under subsection (3), the warrantor must advise the buyer of the person's name and the address where the vehicle is to be repaired.
- (5) The warrantor is taken to have repaired the defect if the part of the vehicle affected by the defect is repaired so that it can be reasonably relied on to perform its intended function.
- (6) The warrantor's obligation to repair the defect under this section continues even though the warrantor is no longer carrying on the business, or performing the activities, of a licensee.

Division 2 Warrantor's failure to repair

13 Application of division

This division applies if the warrantor has by warranty advice or otherwise—

- (a) refused to accept that the defect is covered by the statutory warranty; or

- (b) accepted that the defect is covered by the statutory warranty but—
 - (i) failed to repair the defect within the repair period; or
 - (ii) failed to repair the defect so that the defective part can be reasonably relied on to perform its intended function.

14 Jurisdiction of QCAT

The buyer may apply, as provided under the QCAT Act, to QCAT for an order under section 15 if the amount or value of other relief sought is no more than \$100,000.

15 Orders QCAT may make

- (1) In a proceeding under section 14, QCAT may make only the following orders—
 - (a) an order that the defect is or is not a defect covered by the statutory warranty;
 - (b) an order extending the warranty period for the warranted vehicle to a specified date;
 - (c) an order declaring the warranted vehicle is covered by the statutory warranty until a specified date;
 - (d) an order requiring a party to the proceeding to pay a stated amount to a stated person;
 - (e) an order that a stated amount is not due or owing by the applicant to a stated person, or by any party to the proceeding to the applicant;
 - (f) an order requiring a party to the proceeding, other than the applicant, to perform work to rectify a defect in the warranted vehicle;
 - (g) an order requiring a party to the proceeding to return the warranted vehicle if it is in the party's possession or control to a stated person;

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- (h) an order combining 2 or more orders mentioned in paragraphs (a) to (g).
- (2) Without limiting subsection (1)(d), QCAT may make an order that the warrantor pay to the buyer a stated amount QCAT decides is the reasonable cost of having a defect repaired if—
- (a) the warrantor has, by warranty advice or otherwise, refused to accept that the defect is covered by the statutory warranty; and
 - (b) the buyer has had the defect repaired by another person; and
 - (c) QCAT decides that the defect was one to which the statutory warranty applied.
- (3) However, QCAT can not make an order under subsection (1) that—
- (a) purports to require payment of an amount, performance of work or return of the warranted vehicle of a value of more than \$100,000; or
 - (b) purports to grant relief of a value of more than \$100,000 from the payment of an amount; or
 - (c) combines 2 or more orders mentioned in subsection (1) and purports to award or declare entitlements or benefits (or both) of a total value of more than \$100,000.
- (4) Also, QCAT may make an order under subsection (1)(b) or (c) only if it is satisfied—
- (a) the vehicle was not able to be used by the buyer for a period during the warranty period; and
 - (b) the period from which the order is to be effective to the date the warranty period is to end, and the period during which the vehicle was able to be used by the buyer, taken together, are not more than 3 months.

16 Contravention of QCAT order

- (1) If QCAT makes an order under section 15 in the buyer's favour and the warrantor contravenes the order, the

contravention is a ground for starting disciplinary proceedings under section 194.

- (2) Subsection (1) does not limit any right the buyer may have to enforce the order.

17 Expedited hearing

An expedited hearing under the QCAT Act, section 94, may be conducted for a proceeding under section 14 if—

- (a) the amount or value of other relief sought in the proceeding is not more than \$25,000; or
- (b) the president of QCAT considers it appropriate having regard to—
 - (i) the nature and complexity of the proceeding; and
 - (ii) the views of the parties to the proceeding; and
 - (iii) anything else the president considers relevant.

18 Costs

QCAT may make an order under section 102(1) of the QCAT Act against a party to a proceeding under section 14—

- (a) only if the party is a respondent against whom QCAT has made a final decision; and
- (b) only to order the party to pay to the applicant the amount of any prescribed fee paid by the applicant on filing the application for the proceeding.

19 Constitution of QCAT

For section 195(b) of the QCAT Act, an adjudicator may hear and decide a proceeding under section 14 if either or both of the following apply—

- (a) the amount or value of other relief sought in the proceeding is not more than \$25,000;

- (b) an expedited hearing is to be conducted for the proceeding.

20 Applications for more than QCAT's jurisdictional limit

- (1) This section applies if—
 - (a) a provision of this division provides that an application may be made to QCAT about a matter; and
 - (b) a person seeks the payment of an amount or other relief of a value greater than \$100,000 in relation to the matter.
- (2) A provision of this division about the matter applies—
 - (a) as if a reference to QCAT were a reference to the court having jurisdiction for the recovery of a debt equal to the amount or value of relief sought; and
 - (b) with all other necessary changes to give effect to paragraph (a).

Schedule 2 Decisions subject to review

section 196

- section 23(3) (Chief executive must consider suitability of applicants and licensees)
- section 36(1) (Chief executive may issue or refuse to issue licence)
- section 39(1) (Licence—conditions)
- section 44(1) (Chief executive may renew or refuse to renew licence)
- section 48(1) (Chief executive may restore or refuse to restore licence)
- section 53(1) (Chief executive may appoint or refuse to appoint substitute licensee)
- section 56(1) (Amendment of licence conditions)
- section 61(2) (Immediate suspension)
- section 158(3) (Chief executive must consider suitability of applicants)
- section 166(1) (Chief executive may issue or refuse to issue registration certificate)
- section 167(1) (Registration certificate—conditions)
- section 169(1) (Chief executive may renew or refuse to renew registration certificate)
- section 172(1) (Chief executive may restore or refuse to restore registration certificate)
- section 176(1) (Amendment of registration certificate conditions)
- section 180(2) (Immediate suspension)

Schedule 3 Dictionary

section 9

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 *Property Occupations Act 2014*.

approved form means a form approved under section 235.

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

associate, of a person, other than for section 29, means—

- (a) 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.

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

audit period see the Administration Act, section 33.

audit report see the Administration Act, section 33.

beneficial interest see section 10.

built date, for schedule 1, see schedule 1, section 3C(1).

business address, of a licensee, see 18(1)(b).

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

business day, for part 3, division 6, see section 98.

buyer—

(a) for part 3, division 5—see section 96(1); or

(b) for part 4, division 5—see section 142(1).

caravan means a trailer fitted, equipped, or used principally—

(a) for camping; or

(b) as a dwelling; or

(c) for carrying on any trade or business.

chattel auctioneer—

(a) generally, see section 122(1); or

(b) for part 4, division 6, see also section 144.

chattel auctioneer appointment see section 125(1)(a).

chattel auctioneer licence means a chattel auctioneer licence issued under this Act.

class A warranted vehicle, for schedule 1, see schedule 1, section 3A.

class B warranted vehicle, for schedule 1, see schedule 1, section 3B.

client—

(a) for part 3, division 3, see section 81(1); or

(b) for part 4, division 3, see section 125(1).

commercial vehicle means a motor vehicle—

(a) built mainly for carrying or hauling goods; or

(b) designed to carry more than 9 persons;

but does not include a utility with a nominal load carrying capacity of 1t or less.

commissioner means the commissioner of the police service.

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

consignment, for the sale of a motor vehicle, means the delivering of the motor vehicle by a person into the possession of a motor dealer or chattel auctioneer and the appointing of

the motor dealer or chattel auctioneer as an agent to sell the vehicle for the vehicle's owner.

continuing appointment—

- (a) for part 3, division 3, see section 81(2)(b); or
- (b) for part 4, division 3, see section 125(3)(b).

control order see the *Penalties and Sentences Act 1992*, section 161N.

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 3, division 6, see section 99.

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—

- (a) generally for an applicant or licensee—see section 28(2); or
- (b) for an applicant for, or for the renewal or restoration of, registration as a motor salesperson—see section 161(2).

criminal history report means a report about the criminal history of a person.

criminal intelligence see the Criminal Code, section 86(3).

defect, for schedule 1, see schedule 1, section 2.

defect notice, for schedule 1, see schedule 1, section 9(1).

del credere agent means a chattel auctioneer who—

- (a) is authorised under the chattel auctioneer’s licence to sell livestock; and
- (b) guarantees the payment of the livestock’s purchase price to the seller of the livestock, even if the buyer of the livestock defaults in paying the purchase price.

employ includes engage on a contract for services or commission and use the services of, whether or not for reward.

employed licensee means a licensee who performs the activities of a licensee as the employee of someone else.

executive officer, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

financier means a corporation—

- (a) whose ordinary business (whether or not it carries on any other business) is providing credit for motor vehicles; and
- (b) that does not carry on the business of dealing with motor vehicles other than for 1 or more of the following purposes—
 - (i) selling motor vehicles on instalment terms;
 - (ii) hiring out motor vehicles under hire purchase agreements;
 - (iii) putting in place or enforcing securities over motor vehicles;
 - (iv) hiring out or leasing motor vehicles, if the hiring out or leasing of a motor vehicle does not include a right to purchase the motor vehicle;
 - (v) disposing of motor vehicles acquired by it in connection with a purpose mentioned in subparagraphs (i) to (iv).

former auctioneers licence means any of the following licences under PAMDA—

- (a) an auctioneer's licence;
- (b) a pastoral house auctioneer's licence;
- (c) a pastoral house director's licence;
- (d) a pastoral house licence.

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 means personal property that is tangible property and includes, for example, livestock and used motor vehicles.

holder—

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

in charge see section 11.

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

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

licence means a motor dealer licence or a chattel auctioneer licence.

licence register see section 68(1).

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

licensee—

- (a) generally, means the holder of a motor dealer or chattel auctioneer licence that is in force; or
- (b) for part 7, see section 192; or
- (c) for schedule 1, see schedule 1, section 1.

livestock means cattle, horses, sheep or swine.

misleading includes deceptive.

motor dealer—

- (a) generally, see section 76(1); or
- (b) for part 3, division 7, see section 114.

motor dealer appointment see section 81(1)(a).

motor dealer licence means a motor dealer licence issued under this Act.

motor salesperson—

- (a) generally, means a person who holds a registration certificate as a motor salesperson; or
- (b) for part 7, see also section 192.

motor vehicle see section 12.

new motor vehicle means a motor vehicle that has not been used in transport on a public road in Australia or outside Australia, other than—

- (a) to have work done on it; or
- (b) to protect it; or
- (c) to store it; or
- (d) if the motor vehicle has been imported—to transport it to the importer; or
- (e) if the motor vehicle has been exported—to transport it to the exporter.

non-refundable deposit, for part 3, division 6, see sections 106(1) and 107(1).

obtain—

- (a) for part 3, division 4, subdivision 3, see section 90; or
- (b) for part 4, division 4, subdivision 3, see section 135.

official means—

- (a) the chief executive; or

(b) a public service employee.

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*.

prescribed conduct provision—

(a) for motor dealing practice—see section 94; or

(b) for chattel auctioneering practice—see section 140.

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

registered bidder see section 146A(1).

registered corresponding control order see the *Penalties and Sentences Act 1992*, section 161N.

registered office, of a licensee, see section 70.

registration certificate means a certificate of registration as a motor salesperson issued under section 166.

registration certificate register see section 187(1).

relevant control order, in relation to a licence or registration certificate, means a control order or registered corresponding control order that restricts the person to whom the order applies from carrying on a business, engaging in an occupation or performing an activity that requires the licence or registration certificate.

repairable write-off means a motor vehicle recorded on a TORUM register as a repairable write-off.

repair period, for schedule 1, see schedule 1, section 12(2).

repealed code of conduct means—

(a) the code of conduct under the repealed *Property Agents and Motor Dealers (Motor Dealing Practice Code of Conduct) Regulation 2001*; or

- (b) the code of conduct under the repealed *Property Agents and Motor Dealers (Auctioneering Practice Code of Conduct) Regulation 2001*.

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

respondent, for part 8, see section 204.

responsible licensee—

- (a) for part 3, division 5—see section 96(2); or
(b) for part 4, division 5—see section 142(2).

restorable vehicle means a warranted vehicle that is for sale for restoration and has a built date of more than 20 years before the day of its sale.

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

sale by auction, of a used motor vehicle or other goods, see section 13.

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.

selling agent—

- (a) for part 3, division 5—see section 96(1); or
(b) for part 4, division 5—see section 142(1).

serious offence means—

- (a) any of the following offences punishable by 3 or more years imprisonment—
- (i) an offence involving fraud or dishonesty;
 - (ii) an offence involving the trafficking of drugs;
 - (iii) an offence involving the use or threatened use of violence;
 - (iv) an offence of a sexual nature;
 - (v) extortion;

- (vi) arson;
- (vii) unlawful stalking, intimidation, harassment or abuse; or
- (b) an offence against the Criminal Code, section 76; or
- (c) an offence mentioned in the Criminal Code, part 2, chapter 9A; or
- (d) an offence that is—
 - (i) a prescribed offence within the meaning of the *Penalties and Sentences Act 1992*, section 161N; and
 - (ii) committed with a serious organised crime circumstance of aggravation within the meaning of the *Penalties and Sentences Act 1992*, section 161Q.

single appointment—

- (a) for part 3, division 3, see section 81(2)(a); or
- (b) for part 4, division 3, see section 125(3)(a).

statutory warrant see schedule 1, section 1.

statutory write-off means a motor vehicle recorded on a TORUM register as a statutory write-off.

time of taking possession, for schedule 1, see schedule 1, section 1.

TORUM register means a register kept under a regulation under the *Transport Operations (Road Use Management) Act 1995*.

trust account, means a trust account required to be kept under section 191.

unwarranted vehicle means a used motor vehicle that does not have a statutory warranty.

used imported vehicle means—

- (a) a motor vehicle, other than a new motor vehicle, imported into Australia under—

- (i) the repealed *Motor Vehicle Standards Act 1989* (Cwlth); or
 - (ii) an approval given under the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018* (Cwlth), schedule 3, section 11(2), 13(2), 16(2) or 17(2); or
- (b) a motor vehicle, other than a new motor vehicle, imported into Australia under the *Road Vehicle Standards Act 2018* (Cwlth).

used motor vehicle—

- (a) generally, means—
- (i) a motor vehicle that has, at any time, been licensed or registered, whether under a law of this State or another State; or
 - (ii) a motor vehicle that, had it not been registered as mentioned in subparagraph (i) for use for demonstration or sales promotion, would have been a new motor vehicle; or
 - (iii) a used imported vehicle; or
- (b) for part 3, division 6, see section 98.

warranted vehicle see schedule 1, section 3.

warrantor, for schedule 1, see schedule 1, section 1.

warranty advice, for schedule 1, see schedule 1, section 11(2).

warranty period, for schedule 1, see schedule 1, section 4.

written-off vehicle means a motor vehicle recorded on a TORUM register as—

- (a) a repairable write-off; or
- (b) a statutory write-off.