

Debt Collectors (Field Agents and Collection Agents) Regulation 2014

Explanatory Notes for SL 2014 No. 244

made under the

Debt Collectors (Field Agents and Collection Agents) Act 2014

General outline

Short title

Debt Collectors (Field Agents and Collection Agents) Regulation 2014

Authorising law

Section 150 of the *Debt Collectors (Field Agents and Collection Agents) Act 2014*

Policy objectives and the reasons for them

The objectives of the *Debt Collectors (Field Agents and Collection Agents) Regulation 2014* (the Regulation) are to:

1. facilitate the split of the *Property Agents and Motor Dealers Act 2000* (PAMD Act) and its supporting Regulations into four separate Acts (Agents Acts) and supporting regulations by establishing a regulation specific to the debt collection industry under the *Debt Collectors (Field Agents and Collection Agents) Act 2014* (the Act);
2. support the licensing and regulatory framework provided by the Act; and
3. reduce red tape and regulation by reducing the number of regulatory requirements in comparison to the *Property Agents and Motor Dealers Regulation 2001* (PAMD Regulation) and *Property Agents and Motor Dealers (Commercial Agents Code of Conduct) Regulation 2001* (Code of Conduct) under the PAMD Act.

Achievement of policy objective

Facilitate the repeal and replacement of the PAMD Act and Regulations

The first policy objective will be achieved when the Act commences and the Regulation is made.

Support the licensing and regulatory framework contained in the Act

The second policy objective is achieved by prescribing the following requirements in support of the regulatory elements provided under the Act:

- photograph requirements;
- changes that must be notified to the chief executive (prescribed changes provisions);
- statements by field agents;
- document keeping requirements;
- circumstances under which the chief executive may issue or renew a licence for a shorter term;
- fee concessions and refunds;
- transitional provisions; and
- schedule of fees.

Photograph requirements

Consistent with the existing PAMD Regulation, the regulation prescribes photograph requirements where an applicant is required to supply photographs to accompany an application.

Prescribed changes provisions

Clauses 4 and 5 of the Regulation prescribe particular details for the purpose of section 29 of the Act. That is, if the details listed in clauses 4 and 5 change, the field agent or subagent must notify the chief executive of that change.

While largely consistent with sections 11 and 12 of the PAMD Regulation, the clauses have been simplified for the purposes of clarity in comparison to the existing PAMD Regulation sections.

Clause 4 no longer requires the licensee to notify the chief executive of a change in the director of a corporation (as details of the director are not required to be provided under the Act), but rather, requires the field agent to notify of a change of the person in charge of the field agent's regulated business (clause 4(b)).

Statements by field agents

Consistent with the PAMD Regulation, the Regulation requires field agents who repossess chattels to sign a statement outlining specified particulars, to give a copy of the statement to the field agent's client, to give a copy of the statement to the person from whom the chattel was repossessed and to keep a copy at the field agent's place of business or registered office.

Document keeping requirements

Consistent with the PAMD Regulation, the Regulation prescribes requirements for keeping documents, including documents in electronic form.

Circumstances under which the chief executive may issue or renew a licence for a shorter term

In accordance with the changes to licensing terms from the PAMD Act to the Act (section 74 of the Act), the Regulation prescribes the circumstances under which a licence may be issued or renewed for a shorter term (than the typical 1 year or 3 year terms).

These clauses allow the chief executive to shorten the term of additional licences where more than one licence is held or applied for so that all licences expire at the same time.

Fee concessions and refunds

Consistent with the PAMD Regulation, the Regulation provides fee discounts for persons making multiple applications, for persons who hold multiple licences and for persons renewing multiple licences. The Regulation allows a licensee to apply for and renew additional licences at an issue fee of \$0.

Consistent with the PAMD Regulation, the Regulation provides for issue fee refunds for field agents and subagents in certain circumstances, including withdrawal or refusal of application, surrender of licence, and shortened term.

Consistent with the PAMD Regulation, the Regulation also specifically identifies the circumstances for which no refund is payable.

Transitional provisions

The Regulation supports the negative licensing regime introduced by the Act (section 19), whereby persons are allowed to perform limited debt collection activities without a licence or registration certificate. In particular, clauses 26 and 27 allow a licensee

or registrant who is no longer required to hold a licence or registration certificate under the new negative licensing regime, to surrender their transitioned licence or registration certificate and receive a refund.

These clauses apply to a person who held a commercial agent's licence or a commercial subagent's registration certificate under the PAMD Act, and who holds a transitioned licence or registration certificate granted under section 239 or 240 of the *Property Occupations Act 2014* (which contains transitional provisions for the Act).

This will ensure persons holding current licences and registration certificates (for which a fee has been paid) who are no longer required to hold a licence or registration certificate because of the introduction of the negative licensing regime are not financially disadvantaged by the amendments. In support of that objective, the refund amount for these clauses is calculated based on unexpired whole months, as opposed to unexpired whole years which is the term used to calculate other refund amounts not directly related to the negative licensing changes.

Schedule of fees

The fees payable under the Act are prescribed in the schedule of fees. In particular, the schedule prescribes the fees payable by individuals and corporations for:

- applying for a licence or registration certificate;
- renewing a licence or registration certificate;
- restoring a licence or registration certificate;
- deactivating or reactivating a licence;
- replacing a licence or registration certificate; and
- inspecting a register and getting a copy of details contained in a register.

Reduce red tape and regulation

Consistent with red tape reduction aims of the PAMD Act split process¹, the Act reduces the number of legislative requirements for licensees, registered employees and businesses in comparison to requirements of the PAMD Act. For this reason, the regulation does not include provisions for several matters covered under the PAMD Regulation. These include:

- section 9 Application for renewal or restoration of licence;
- section 10 Display of licence;
- section 13(2) and (3) Display and publication of licensee's name;

¹ Refer to the Explanatory Notes for the Debt Collectors (Field Agents and Collection Agents) Bill 2013, pages 3-11.

- section 14 Educational or other qualifications for registration as a registered employee—Act, s 90;
- section 15 Employee particulars for employment register;
- section 16 Form of employment register; and
- section 56 Amendments of a register or record.

Select provisions of the Code of Conduct considered necessary for the effective operation of the Act have been retained in the regulation as Conduct Standards. These include:

- acting in accordance with client's instructions (clause 10);
- conflict of duty or interest (clause 11); and
- finding out or verifying material facts (clause 12)

The remaining elements of the Code of Conduct are not retained in the Regulation.

Consistency with policy objectives of authorising law

The Regulation is consistent with the main objects of the Act. The objects of the Act are:

- (a) to provide a system for the regulation of the activities and conduct of debt collectors and subagents that achieves an appropriate balance between-
 - (i) the need to regulate for the protection of consumers; and
 - (ii) the need to promote freedom of enterprise in the marketplace; and
- (b) to provide a way of protecting consumers against particular undesirable practices associated with regulated activity.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objective

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

Stakeholders will benefit from the Regulation as it contains significantly fewer legislative obligations compared to the existing PAMD Regulation and Code of Conduct.

The implementation costs associated with this Regulation are consistent with those which are associated with the repeal and replacement of the PAMD Act by the Agents Acts.

Consistency with fundamental legislative principles

The Regulation is generally consistent with fundamental legislative principles.

The provisions which will, consistent with status quo, clarify that when a person holds more than one type of licence, the licence term of the second licence may be shortened so that both licences will expire on the same day, may be considered an inappropriate delegation of administrative power.

The possible breach is justified as it is necessary to provide administrative flexibility for the benefit of licensees that hold more than one type of licence. Stakeholders will benefit from a reduction in red tape and a savings in the time associated with potentially being required to renew multiple licences at different times through separate renewal processes.

Allowing the chief executive to shorten a licence term in the circumstances provided for in the legislation will ensure licence renewal applications can be processed more efficiently and will benefit stakeholders.

Consultation

While the Regulation is largely consistent with existing provisions of the PAMD Regulation and Code of Conduct, a large number of provisions from those instruments are not retained in the Regulation. As such, stakeholders will benefit from a significant reduction in legislative obligations and red tape.

Targeted consultation on a draft version of the Regulation was undertaken with key stakeholders, including the Institute of Mercantile Agents Ltd and Queensland Law Society. Stakeholders were largely supportive of the provisions of the Regulation. However, to improve the operation of the legislation and implement particular stakeholder feedback, recommendations consistent with the objectives of the Act and Regulation were included.

The Department of the Premier and Cabinet, Queensland Treasury and Trade, and the Office of Best Practice Regulation within the Queensland Competition Authority were consulted on the Regulation. The Department of the Premier and Cabinet and Queensland Treasury and Trade did not raise any concerns regarding the Regulation.

The Office of Best Practice Regulation advised it was unlikely that the proposals given effect by the Regulation would have significant adverse impacts on stakeholders and, therefore, a Preliminary Impact Assessment is not required.