Queensland

AGENTS AND MOTOR DEALERS BILL 1997

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1997

A BILL

FOR

An Act to comprehensively provide for the regulation of the functions, licensing and conduct of restricted letting agents, real estate agents, pastoral houses, auctioneers and trainee auctioneers, motor dealers and commercial agents and their employees, and for other purposes

The Parliament of Queensland enacts—

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

Short title

1. This Act may be cited as the *Agents and Motor Dealers Act 1997*.

Commencement

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

Application of Act

3.(1) This Act binds all persons, including the State, and, so far as the legislative power of Parliament permits, the other States.

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

Exemption—regulation

4.(1) A regulation may exempt a person from this Act or any of its provisions.

(2) The exemption may be given on stated conditions.

(3) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

Exemption—auctions

5. Chapter 6[1] does not apply to—

(a) a sale ordered by the sheriff under any writ or process issued out of a Magistrates Court or any other court; or

(b) a sale made under a rule, order, or judgment of the Supreme Court or a District Court; or

(c) a sale made by a person obeying an order of, or a process issued by, a Magistrates Court or any other court, judge or justice for the recovery of a fine, penalty, or award; or

(d) a sale of an animal lawfully impounded and sold under a law about impounding; or

(e) a sale of goods distrained for rent or arrears of rent; or

(f) a sale by postal bids of stamps or coins.

Exemption—public officials

6.(1) Section 330[2] does not apply to a bailiff serving a writ, claim, application, summons or other process.

(2) Chapter 11 does not apply to an accountable officer in relation to trust moneys for which the accountable officer is responsible if another Act makes provision for the way the accountable officer is required to deal with moneys.

(3) In this section—

"accountable officer" means an accountable officer under the *Financial Administration and Audit Act 1977*.

"bailiff" means a bailiff appointed under the *Supreme Court Act 1995*, part 12, the *District Courts Act 1967* or the *Magistrates Courts Act 1921*.

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1 Chapter 6 (Auctioneers and trainee auctioneers)

2 Section 330 (Acting as commercial agent)

Exemption—financial institutions, trustee companies etc.

7.(1) Sections 149, 195, 304 and 330[3] do not apply to a financial institution, trustee company or friendly society.

(2) In this section—

"friendly society" means a society within the meaning of the Friendly Societies (Queensland) Code.

"trustee company" means a trustee company under the *Trustee Companies Act 1968* and includes the public trustee when the public trustee is—

(a) performing the functions that may be performed by a trustee company; or

(b) exercising the powers that may be exercised by a trustee company; or

(c) holding an office that may be held by a trustee company.

Exemption—accountants

8.(1) An accountant, other than an accountant prescribed under a regulation, acting in the ordinary course of the accountant's profession is exempt from the following provisions of this Act—

(a) section 149, to the extent the accountant performs the functions of a real estate agent—

(i) in the buying, selling, exchanging, or letting of businesses or interests in businesses; or

(ii) in the collection of rents;

(b) section 330, to the extent the accountant performs the functions of a commercial agent collecting, or requesting payment of, debts;

(c) chapter 9, part 1.[4]

3 Sections 149 (Acting as real estate agent), 195 (Acting as pastoral house), 304 (Acting as motor dealer) and 330 (Acting as commercial agent)

4 Sections 149 (Acting as real estate agent), 330 (Acting as commercial agent) and chapter 9 (Accounts and funds), part 1 (Trust accounts)

(2) An accountant to whom subsection (1) applies is exempt from chapter 9, part 1 only if the accountant complies with the *Trust Accounts Act 1973* in relation to trust moneys.

(3) In this section—

"accountant" means—

(a) a member of the Institute of Chartered Accountants in Australia who holds a current certificate of public practice issued by the institute; or

(b) a member of the Australian Society of Certified Practising Accountants who holds a current certificate of public practice issued by the society; or

(c) a registered company auditor under the Corporations Law.

Exemption—solicitors

9.(1) A solicitor acting in the ordinary course of the solicitor's profession is exempt from the following provisions of this Act—

(a) section 149, to the extent the solicitor performs the functions of a real estate agent in the collection of rents;

(b) section 330, to the extent the solicitor performs the functions of a commercial agent collecting, or requesting payment of, debts;

(c) chapter 9, part 1.[5]

(2) A solicitor is exempt from chapter 9, part 1 only if the solicitor complies with the *Trust Accounts Act 1973* in relation to trust moneys.

Exemption—pastoral houses

10.(1) A pastoral house is exempt from chapter 9[6] except in relation to

5 Sections 149 (Acting as real estate agent), 330 (Acting as commercial agent) and chapter 9 (Accounts and funds), part 1 (Trust accounts)

6 Chapter 9 (Accounts and funds)

the sale of rural land or the auction of land that is not rural land.

(2) Subsection (1) applies subject to section 154(3).[7]

Exemption—livestock sales

11. A del credere agent is exempt from chapter 9 in relation to the sale of livestock if the agent and the livestock's seller agree in writing before the sale that the agent guarantees payment of the livestock's purchase price to the seller.[8]

PART 2—OBJECTS

Objects

12.(1) The primary object of this Act is to provide a regulatory system for restricted letting agents, real estate agents, pastoral houses, auctioneers and trainee auctioneers, motor dealers and commercial agents 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 primary object is to be achieved mainly by—

(a) ensuring—

(i) persons who carry on business or are in charge of a licensee's business at a place under the authority of an agents and motor dealers licence maintain close personal supervision of the way the business is carried on; and

(ii) only suitable persons with appropriate qualifications are licensed; and

(b) providing—

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7 Section 154 (What a pastoral house licence authorises)

8 This practice is commonly referred to as 'del credere'.

(i) protection for consumers in their dealings with licensees and their employees; and

(ii) a legislative framework within which persons performing functions for licensees may lawfully operate; and

(c) deregulating fees and commissions, but providing for a review of excessive fees and commissions; and

(d) promoting administrative efficiency by providing that—

(i) responsibility for licensing rests with the chief executive; and

(ii) responsibility for claims against the fund rests with the registrar and the agents and motor dealers board; and

(iii) responsibility for disciplinary matters rests with the agents and motor dealers board; and

(e) continuing the operation of the fidelity guarantee fund to provide compensation for persons who suffer financial loss because of their dealings with persons regulated under this Act; and

(f) providing increased flexibility in enforcement measures through codes of conduct, injunctions and undertakings.

PART 3—INTERPRETATION

Dictionary

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

Use of certain tags

14.(1) In this Act, persons or things are sometimes given identifying tags, for example, a real estate agent and a pastoral house might be given the tag **“selling agent”**.

(2) An identifying tag is generally used as a shorthand way of describing a number of persons or things for a provision or series of provisions in the section or division where the tag is established and used.

(3) An identifying tag used for a provision or series of provisions may be used again (and have a different meaning) in another provision or series of provisions.

Meaning of "beneficial interest"

15.(1) For this Act, a licensee is taken to have a **"beneficial interest"** in property in each of the following cases—

Case 1

The purchase or sale of the property is made for the licensee or employee or an associate[9] of the licensee or employee.

Case 2

The licensee or employee or an associate of the licensee or employee has an option to purchase the property.

Case 3

The purchase or sale of the property is made for a corporation (having not more than 100 members) of which the licensee or employee or an associate of the licensee or employee is a member.

Case 4

An option to purchase the property is held by a corporation (having not more than 100 members) of which the licensee or employee or an associate of the licensee or employee is a member.

Case 5

The purchase or sale of the property is made for a corporation of which the licensee or employee or an associate of the licensee or employee is an executive officer.

Case 6

An option to purchase the property is held by a corporation of which the licensee or employee or an associate of the licensee or employee is an executive officer.

9 'Associate' is a term defined in the dictionary.

Case 7

The purchase or sale of the property is made for a member of a firm or partnership of which the licensee or employee or an associate of the licensee or employee is also a member.

Case 8

The purchase or sale of the property is made for a person carrying on a business for profit or gain if the licensee or employee or an associate of the licensee or employee has, directly or indirectly, a right to participate in the income or profits of the person's business or the purchase or sale of the property.

(2) For this Act, an employee of a licensee is taken to have a **"beneficial interest"** in property in each of the following cases—

Case 1

The purchase or sale of the property is made for the employee or an associate[10] of the employee.

Case 2

The licensee or employee or an associate of the employee has an option to purchase the property.

Case 3

The purchase or sale of the property is made for a corporation (having not more than 100 members) of which the employee or an associate of the employee is a member.

Case 4

An option to purchase the property is held by a corporation (having not more than 100 members) of which the employee or an associate of the employee is a member.

Case 5

The purchase or sale of the property is made for a corporation of which the employee or an associate of the employee is an executive officer.

10 'Associate' is a term defined in the dictionary.

Case 6

An option to purchase the property is held by a corporation of which the employee or an associate of the employee is an executive officer.

Case 7

The purchase or sale of the property is made for a member of a firm or partnership of which the employee or an associate of the employee is also a member.

Case 8

The purchase or sale of the property is made for a person carrying on a business for profit or gain if the employee or an associate of the employee has, directly or indirectly, a right to participate in the income or profits of the person's business or the purchase or sale of the property.

Meaning of "in charge"

16.(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 and 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.

Meaning of "motor vehicle"

17.(1) "Motor vehicle" means—

(a) a land vehicle designed to be propelled by anything other than humans, animals, gravity or the wind; or

(b) a caravan.

(2) "Motor vehicle" does not include—

(a) a train or hovercraft; or

(b) a vehicle used, or intended to be used, primarily in mining; or

(c) a trailer designed to be attached to or drawn by a motor vehicle; or

(d) a tractor or farm machinery; or

(e) a vehicle designed for use on a railway or tramway; or

(f) a fire engine.

Meaning of "open listing"

18.(1) An **"open listing"** is a written agreement entered into between a person (**"seller"**) and 1 or more real estate agents or 1 or more pastoral houses (**"selling agents"**) under which the seller appoints the selling agents, in accordance with the terms of the agreement, to sell stated property.

(2) Under an open listing—

(a) the seller retains a right—

(i) to sell the seller's property during the term of the agreement; or

(ii) to appoint another selling agent to sell the property; and

(b) only the selling agent who is the effective cause of sale is entitled to remuneration; and

(c) the appointment of a selling agent can be ended by either the seller or the selling agent at any time.

Difference between "sole agency" and "exclusive agency"

19.(1) The only difference between a **"sole agency"** and an **"exclusive agency"** is the entitlement of a selling agent to receive agreed remuneration on the sale of particular property.

(2) Under an **"exclusive agency"**, a selling agent is entitled, on the sale of particular property and in accordance with the terms of an agreement with the seller of the property, to receive an agreed remuneration, whether or not the selling agent is the effective cause of the sale.

(3) However, if the sale were subject to a **"sole agency"**, the selling agent would not be entitled to the remuneration if the seller were the effective cause of the sale.

Example—

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

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

case 1—R

case 2—X (another real estate agent)

case 3—M (S's mother)

case 4—S.

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

(4) In this section—

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

"selling agent", of property, means a real estate agent, pastoral house or auctioneer appointed under a written agreement under this Act by the seller to sell the property.

CHAPTER 2—LICENSING

PART 1—CATEGORIES OF LICENCES

Categories of licences

20. The chief executive may issue the following categories of agents and motor dealers licence under this act—

(a) agents and motor dealers licence (real estate);

(b) agents and motor dealers licence (restricted letting agent);

(c) agents and motor dealers licence (pastoral house);

(d) agents and motor dealers licence (pastoral house director);

(e) agents and motor dealers licence (pastoral house manager);

(f) agents and motor dealers licence (pastoral house auctioneer);

(g) agents and motor dealers licence (auctioneer);

(h) agents and motor dealers licence (trainee auctioneer);

(i) agents and motor dealers licence (motor dealer);

(j) agents and motor dealers licence (commercial agent).

PART 2—HOW TO OBTAIN A LICENCE

Steps involved in obtaining a licence

21.(1) A person who wishes to obtain a licence must be a suitable person to hold a licence under part 4.[11]

(2) The person must take the following steps to obtain a licence—

Step 1

- advertise the person's intention to apply for the licence under section 22

Step 2

- apply for the licence under section 23 by—
    - submitting an application showing, among other things, the person is eligible to obtain the licence
    - paying the prescribed fees and the contribution to the fund
    - giving the chief executive the other information required under section 24 and, if the person intends carrying on business under the licence, section 26.

(3) The chief executive decides the person's application after having regard, among other things, to—

(a) the person's suitability to hold a licence under this Act; and

(b) any objections that may be made to the chief executive following the advertising of the person's intention to apply for the licence;

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11 Part 4 (Suitability of applicants and licensees)

and

(c) the person's eligibility to hold the licence.

PART 3—APPLICATIONS FOR LICENCES

Applicant must advertise intention to apply for licence

22.(1) An applicant for a licence must advertise the applicant's intention to apply for the licence in a newspaper that is published at least 5 days in each week in the area where the applicant intends—

(a) to carry on business under the licence; or

(b) to perform the functions of a licensee under the licence.

(2) The advertisement must—

(a) be in the approved form; and

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

(c) if the applicant is a corporation—state the name of each director of the corporation; and

(d) state the town or suburb where the applicant intends to carry on business under the licence; and

(e) appear in the newspaper not earlier than 21 days and not later than 7 days before the application is filed with the chief executive.

(3) This section does not apply to an application for—

(a) a pastoral house licence; or

(b) a pastoral house director's licence; or

(c) a pastoral house manager's licence; or

(d) a pastoral house auctioneer's licence; or

(e) a trainee auctioneer's licence.

Application for licence

23.(1) An applicant for a licence must—

(a) apply in the approved form; and

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

(c) establish the applicant's eligibility for the category of licence being applied for; and

(d) provide any information the chief executive reasonably requires to decide whether the applicant is a suitable person to hold a licence; and

(e) be accompanied by—

(i) an application fee; and

(ii) a licence issue fee; and

(iii) the contribution to the fund that may be prescribed under a regulation; and

(iv) evidence that the applicant has advertised the applicant's intention to apply for a licence under section 22; and

(v) for an individual applicant—2 recent colour photographs of the applicant of a size prescribed under a regulation and certified as photographs of the applicant in the way prescribed under a regulation.

(2) Subsection (1)(e)(i), (ii) and (iii) does not apply if the applicant is a corporation that holds another category of agents and motor dealers licence.

Applicant must state business address

24.(1) The applicant must also state in the applicant's application—

(a) if the applicant intends carrying on business under an agents and motor dealers 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 person intends performing functions under the licence and the address where the functions are to be performed (**"business address"**); and

(ii) if the person intends to be a person in charge of a licensee's business at a place of business—the name of the person's employer and the address of the place of business where the person is to be in charge (also a **"business address"**).

Examples of capacity in which functions may be performed—

- director of a licensed corporation
- 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 specify 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.

Example—

A post office box is not a place the applicant may use as a place of business or an address for this Act.

Requirement to give information or material about application

25.(1) This section applies to an applicant for a licence.

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

(3) The applicant is taken to have withdrawn the application if, within the stated reasonable time, the applicant fails to comply with a requirement under subsection (2).

Applicant intending to carry on business to advise name of auditor

26. If the applicant intends carrying on business under a licence and is required under this Act to keep a trust account, the applicant must—

(a) state in the applicant's application the name and business address of an auditor appointed by the applicant to audit the trust account;[12] and

(b) give the chief executive evidence that the auditor has accepted the appointment as auditor.

PART 4—SUITABILITY OF APPLICANTS AND LICENSEES

Suitability of applicants and licensees—individuals

27.(1) An individual is not a suitable person to hold a licence if the person is—

(a) an undischarged bankrupt; or

(b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or

(c) currently disqualified from holding a licence; or

(d) a person the chief executive decides under section 29[13] is not a suitable person to hold a licence.

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

Suitability of applicants and licensees—corporations

28.(1) A corporation is not a suitable person to hold a licence unless the corporation is—

12 See section 357 (Principal licensee must appoint auditor)

13 Section 29 (Chief executive must consider suitability of applicants and licensees)

(a) a corporation within the meaning of the Corporations Law; or

(b) a GOC.

(2) Also, a corporation is not a suitable person to hold a licence if an executive officer of the corporation is—

(a) an undischarged bankrupt; or

(b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or

(c) a person the chief executive decides under section 29 is not a suitable person to hold a licence.

(3) A corporation that is not a suitable person can not hold a licence.

Chief executive must consider suitability of applicants and licensees

29.(1) The chief executive must, when deciding whether a person is a suitable person to hold a licence, consider the following things—

(a) the character of the person or the person's business associates;

(b) any objections made in relation to the person's application for the licence;

(c) whether the person held a licence under this Act, the repealed Act or a corresponding law that was suspended or cancelled;

(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 this Act, the repealed Act or a corresponding law from being a licensee or an executive officer of a corporation;

(f) for an individual—

(i) the person's criminal history; and

(ii) whether the person has compounded with creditors or otherwise taken, or applied to take, advantage of any law about bankruptcy; and

(iii) whether the person has been convicted of an offence against this Act, the repealed Act or any other Act; and

(iv) whether the person is capable of satisfactorily performing the functions of a licensee;

(v) whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Law;

(g) for a corporation—

(i) whether the corporation has been placed in receivership or liquidation; and

(ii) whether an executive officer of the corporation has compounded with creditors or otherwise taken, or applied to take, advantage of any law about bankruptcy; and

(iii) whether an executive officer of the corporation has been convicted of an offence against this Act or the repealed Act; and

(iv) whether each executive officer of the corporation is a suitable person to hold a licence;

(h) another thing the chief executive may consider under this Act or a regulation.

(2) If the chief executive decides a person is not a suitable person to hold a licence, the chief executive must give the person an information notice.

(3) In this section—

"business associate", of an applicant or licensee, means a person with whom the applicant or licensee carries on, or intends carrying on, business under an agents and motor dealers licence.

Public trustee is a suitable person

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

Chief executive of department is suitable person

31. A chief executive of a department of government is taken to be a suitable person to hold a licence.

Investigations about suitability of applicants and licensees

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

(a) the applicant or licensee;

(b) if the applicant or licensee is a corporation—the corporation's executive officers;

(c) a business associate of the applicant or licensee.

(2) Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a written report about the criminal history of any of the persons.

(3) The commissioner must give the report to the chief executive.

(4) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.

(5) In this section—

"business associate", of an applicant or licensee, means a person with whom the applicant or licensee carries on, or intends carrying on, business under an agents and motor dealers licence.

Criminal history is confidential document

33.(1) An officer, employee or agent of the department must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 32.

Maximum penalty—100 penalty units.

(2) However, the person does not contravene subsection (1) if—

(a) disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under or in relation to this Act; or

(b) the disclosure is otherwise required or permitted by law.

Requirement to give chief executive information or material about suitability

34.(1) This section applies to an applicant for a licence or the renewal or restoration of a licence.

(2) The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive information or material the chief executive reasonably considers is needed to establish the applicant's suitability for the licence within a stated reasonable time.

(3) The applicant is taken to have withdrawn the application if, within the stated reasonable time, the applicant fails to comply with a requirement under subsection (2).

PART 5—ELIGIBILITY FOR LICENCE

Division 1—Restricted letting agent's licence

Eligibility for restricted letting agent's licence

35.(1) An individual is eligible to obtain a restricted letting agent's licence for a building complex only if the individual—

(a) is at least 18 years; and

(b) has the educational or other qualifications for a restricted letting agent's licence that may be prescribed under a regulation; and

(c) satisfies the chief executive that the individual—

(i) has body corporate approval for the individual or the person by whom the individual is to be employed to carry on a business of letting lots in the building complex under the authority of a licence; and

(ii) resides, or will reside if issued with a licence, in the building complex; and

(iii) has a place in the building complex that will be the individual's registered office.

(2) The chief executive may exempt an individual from the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—

(a) has a comparable qualification; or

(b) has, within 2 years before the day the individual's application for a restricted letting agent's licence is received by the chief executive, been licensed as a restricted letting agent or real estate agent under this Act or the repealed Act.

(3) A corporation is eligible to obtain a restricted letting agent's licence for a building complex only if the corporation satisfies the chief executive that—

(a) the corporation has body corporate approval for the corporation to carry on a business of letting lots in the building complex under the authority of a licence; and

(b) a director of the corporation is a restricted letting agent; and

(c) the individual who will perform the functions of a restricted letting agent for the corporation—

(i) is a restricted letting agent; and

(ii) resides, or will reside if the corporation is issued with a licence, in the building complex; and

(iii) has a place in the building complex that will be the individual's registered office.

(4) An individual who satisfies the chief executive that the individual will be a director of a corporation that is a restricted letting agent is not required to comply with subsection (1)(c)(ii) if the individual does not intend performing the functions of a restricted letting agent for the building complex.

Division 2—Real estate agent's licence

Eligibility for real estate agent's licence

36.(1) An individual is eligible to obtain a real estate agent's licence only if the individual—

(a) is at least 18 years; and

(b) has the educational or other qualifications for a real estate agent's licence that may be prescribed under a regulation.

(2) The chief executive may exempt an individual from the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—

(a) has a comparable qualification; or

(b) has, within 2 years before the day the individual's application for a real estate agent's licence is received by the chief executive, been licensed as a real estate agent under this Act or the repealed Act.

(3) A corporation is eligible to obtain a real estate agent's licence only if the corporation satisfies the chief executive that a director of the corporation is a real estate agent.

Division 3—Pastoral house licences

Eligibility for pastoral house licence

37. A corporation is eligible to obtain a pastoral house licence only if—

(a) the corporation is—

(i) a corporation within the meaning of the Corporations Law; and

(ii) the holder of an exemption granted under the *Banking Act 1959* (Cwlth), section 11; and

(iii) registered as a finance corporation under the *Banking Act 1959* (Cwlth); and

(iv) an excluded corporation for the Corporations Law, chapter 7;

and

(b) the corporation satisfies the chief executive that a director of the corporation is a pastoral house director.

Eligibility for pastoral house director's licence

38. A person is eligible to obtain a pastoral house director's licence only if the person—

(a) is an individual and at least 18 years; and

(b) has the educational or other qualifications for a pastoral house director's licence that may be prescribed under a regulation; and

(c) has been employed by a pastoral house for at least the period prescribed under a regulation; and

(d) is, or satisfies the chief executive that the person, on the issue of the licence, will be, a director of the pastoral house specified in the person's application for licence.

Eligibility for pastoral house manager's licence

39. A person is eligible to obtain a pastoral house manager's licence only if the person—

(a) is an individual and at least 18 years; and

(b) has the educational or other qualifications for a pastoral house manager's licence that may be prescribed under a regulation; and

(c) has been employed by a pastoral house for at least the period prescribed under a regulation.

Eligibility for pastoral house auctioneer's licence

40. A person is eligible to obtain a pastoral house auctioneer's licence only if the person—

(a) is an individual and at least 18 years; and

(b) has the educational or other qualifications for a pastoral house auctioneer's licence that may be prescribed under a regulation;

and

(c) has been employed by a pastoral house for at least the period prescribed under a regulation.

Division 4—Auctioneer's and trainee auctioneer's licences

Eligibility for auctioneer's licence

41.(1) An individual is eligible to obtain an auctioneer's licence only if the individual—

(a) is at least 18 years; and

(b) has the educational or other qualifications for an auctioneer's licence that may be prescribed under a regulation.

(2) The chief executive may exempt an individual from the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—

(a) has a comparable qualification; or

(b) has, within 2 years before the day the individual's application for an auctioneer's licence is received by the chief executive, been licensed as an auctioneer under this Act or the repealed Act.

(3) A corporation is eligible to obtain an auctioneer's licence only if the corporation satisfies the chief executive that a director of the corporation is an auctioneer.

Eligibility for trainee auctioneer's licence

42. A person is eligible to obtain a trainee auctioneer's licence only if the person—

(a) is an individual and at least 18 years; and

(b) has the educational or other qualifications for a trainee auctioneer's licence that may be prescribed under a regulation; and

(c) satisfies the chief executive that—

(i) the person will work only under the supervision of 1 or more individuals who are auctioneers; and

(ii) the individual or individuals have consented to supervise the person in the performance of the person's functions.

Division 5—Motor dealer's licence

Eligibility for motor dealer's licence

43.(1) An individual is eligible to obtain a motor dealer's licence only if the individual—

(a) is at least 18 years; and

(b) has the educational or other qualifications for a motor dealer's licence that may be prescribed under a regulation.

(2) The chief executive may exempt an individual from the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—

(a) has a comparable qualification; or

(b) has, within 2 years before the day the individual's application for a motor dealer's licence is received by the chief executive, been licensed as a motor dealer under this Act or the repealed Act.

(3) A corporation is eligible to obtain a motor dealer's licence only if the corporation satisfies the chief executive that a director of the corporation is a motor dealer.

Division 6—Commercial agent's licence

Eligibility for commercial agent's licence

44.(1) An individual is eligible to obtain a commercial agent's licence only if the individual—

(a) is at least 18 years; and

(b) has the educational or other qualifications for an commercial agent's licence that may be prescribed under a regulation.

(2) The chief executive may exempt an individual from the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—

(a) has a comparable qualification; or

(b) has, within 2 years before the day the individual's application for a commercial agent's licence is received by the chief executive, been licensed as a commercial agent under this Act or the repealed Act.

(3) A corporation is eligible to obtain a commercial agent's licence only if the corporation satisfies the chief executive that a director of the corporation is a commercial agent.

Division 7—Public trustee and chief executives

Public trustee is eligible to obtain certain licences

45.(1) The public trustee as a corporation sole (**"corporate trustee"**) is taken to be eligible to obtain the following licences—

(a) real estate agent's licence;

(b) auctioneer's licence;

(c) motor dealer's licence;

(d) commercial agent's licence.

(2) If the corporate trustee is the holder of a licence under this Act, the public trustee appointed, from time to time, by the Governor in Council is taken to be eligible to be a licensed director of the corporate trustee.

Chief executive of department is eligible to obtain certain licences

46. The chief executive of a department is taken to be eligible to obtain the following licences—

(a) real estate agent's licence;

(b) auctioneer's licence;

(c) motor dealer's licence;

(d) commercial agent's licence.

PART 6—OBJECTIONS

Persons may object to issue, renewal or restoration of licences

47.(1) A person (**"objector"**) may object to the issue, renewal or restoration of a licence to a person by writing to the chief executive and stating the grounds for the objector's objection.

(2) The grounds for objection are limited to the person's eligibility or suitability.

(3) An objection under this section may be given to the chief executive at any time and must be accompanied by any information that may be prescribed under a regulation.

(4) A person is not liable, civilly, criminally or under an administrative process, for anything published to the chief executive in making an objection.

(5) Without limiting subsection (4), in a proceeding for defamation the person has a defence of absolute privilege for anything published to the chief executive in making the objection.

Chief executive to advise applicant of objection

48.(1) This section applies if the chief executive is considering an application for the issue, renewal or restoration of a licence made by a person and the chief executive has received an objection about the person under section 47.

(2) The chief executive must give the person a copy of the objection before deciding the person's application.

Applicant may make submission about objections

49. The applicant may, within 7 days after receiving the copy of the objection, give the chief executive a written submission about the objection.

PART 7—ISSUE OF LICENCES

Chief executive must have regard to objections and applicant's submission

50. The chief executive must, when considering an application for the issue of a licence, have regard to any objection received about the issue of the licence and the applicant's submission, if any, about the objection.

Chief executive may issue or refuse to issue licence

51.(1) The chief executive may issue or refuse to issue a licence to an applicant.

(2) The chief executive may issue a licence to an applicant only if the chief executive is satisfied that the applicant—

(a) is a suitable person 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; and

(ii) if the applicant is a corporation—each executive officer of the corporation is a suitable person; and

(b) is eligible to obtain a licence of the category of licence being applied for.

(3) If the chief executive refuses to issue the licence, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.

(4) If a person's application for a licence is refused, the person may not file another application for a licence—

(a) for 3 months after the day the chief executive gives the applicant the information notice under subsection (3); or

(b) if the person appeals the chief executive's decision and the appeal is dismissed—for 3 months after the day the appeal is dismissed.

Licence—public trustee

52.(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) The chief executive may issue a licence to the public trustee in the public trustee's capacity as an individual and director of the corporation sole in the name of the public trustee for the time being.

(3) An individual acting as public trustee is taken to be the holder of the licence mentioned in subsection (2).

Licence—chief executive of department

53.(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.

Licence—conditions

54.(1) The chief executive may issue a licence on the conditions the chief executive considers necessary or desirable for the proper performance of the functions authorised by the licence.

(2) A condition may limit or prohibit the performance of a function authorised under this Act.

PART 8—RESTRICTIONS ON PERFORMING FUNCTIONS UNDER LICENCES

Restriction—corporations

55.(1) A corporation that holds a licence may perform a function under its licence only if the function may be performed by a licensed director of the corporation under the director's licence.

Example—

D is the only licensed director of Company Pty Ltd. D holds an motor dealer's licence that is subject to a condition that D deal only in motor cycles. Because of that condition, Company Pty Ltd is only authorised to deal in motor cycles under its licence.

However, if L becomes another licensed director of Company Pty Ltd and L is authorised under L's licence to deal in caravans, Company Pty Ltd may also deal in caravans.

(2) If the corporation performs a function 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 function.

Restriction—individuals

56.(1) An individual who is an employed licensee may perform a function authorised under the individual's licence only if the function 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 condition. However, P's licence is subject to a condition that P deal only in motor cycles. Because of that condition, E is only authorised to deal in motor cycles under E's licence during E's employment with P and while P is subject to that condition.

(2) A trainee auctioneer may perform a function authorised under the trainee's licence only if the function may also be performed by the auctioneer under whose supervision the trainee is working.

(3) If the employed licensee or trainee auctioneer performs a function the employed licensee or trainee is not authorised to perform because of subsection (1) or (2), the employed licensee or trainee is taken to be a person who acts as a licensee without a licence for the performance of the function.

Restriction—conditions

57.(1) This section applies to a licensee who performs a function under the licensee's licence that the licensee is not authorised to perform because of a condition on the licensee's licence.

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

PART 9—RENEWAL AND RESTORATION OF LICENCES

Division 1—Renewal

Application for renewal

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

(2) The application must be—

(a) made in the approved form; and

(b) accompanied by—

(i) an application fee; and

(ii) a licence renewal fee; and

(iii) the contribution to the fund that may be prescribed under a regulation; and

(iv) for an individual applicant—a recent colour photograph of the applicant of a size prescribed under a regulation.

(3) The application must also be accompanied by—

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

(b) a statutory declaration that the licensee did not operate a trust account during the relevant audit period.

(4) The licensee must also satisfy the chief executive that the licensee has actively carried out the functions authorised under the licence for a period, and within the period, prescribed under a regulation.

(5) In this section—

"audit period" see section 365.[14]

"audit report" see section 365.

"relevant audit period", for a licensee's licence, means the audit period ending immediately before the licence's expiry date.

Chief executive must have regard to objections and licensee's submission

59. The chief executive must, when considering the licensee's application for renewal of the licence, have regard to—

(a) any objection received about the renewal and not previously considered; and

(b) the licensee's submission, if any, about the objection.

Chief executive may renew or refuse to renew licence

60.(1) The chief executive must consider the renewal application and may renew or refuse to renew the licence.

(2) The chief executive may renew the licence only if the chief executive is satisfied—

(a) the licensee is a suitable person 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; and

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14 Section 365 (Definitions for div 3)

(ii) if the licensee is a corporation—each executive officer of the corporation is a suitable person; and

(b) the application is properly made; and

(c) the licensee has, as a licensee or salesperson, actively carried out the functions authorised under the licence for a period, and within the period, prescribed under a regulation; and

(d) the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.

(3) For subsection (2)(b), an application is properly made only if it complies with section 58[15] and is accompanied by the things mentioned in that section.

(4) If the chief executive refuses the application, the chief executive must give the applicant an information notice about the decision.

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

61. If an application is made under section 58,[16] 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 decided under section 60 or taken to have been withdrawn under section 34(3).[17]

Division 2—Restoration

Application for restoration

62.(1) If a licensee's licence expires, the licensee may apply for restoration of the licence.

(2) The application must be—

(a) made within 3 months of the expiry; and

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15 Section 58 (Application for renewal)

16 Section 58 (Application for renewal)

17 Section 34 (Requirement to give chief executive information or material about suitability)

(b) made in the approved form; and

(c) accompanied by—

(i) an application fee; and

(ii) a licence renewal fee; and

(iii) a licence restoration fee; and

(iv) the contribution to the fund that may be prescribed under a regulation; and

(v) for an individual applicant—a recent colour photograph of the applicant of a size prescribed under a regulation.

(3) The application must also be accompanied by—

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

(b) a statutory declaration that the licensee did not operate a trust account during the relevant audit period.

(4) The licensee must also satisfy the chief executive that the licensee has, as a licensee or salesperson, actively carried out the functions authorised under the licence for a period, and within the period, prescribed under a regulation.

(5) In this section—

"audit period" see section 365.[18]

"audit report" see section 365.

"relevant audit period", for a licensee's licence, means the audit period ending immediately before the licence's expiry date.

Chief executive must have regard to objections and licensee's submission

63. The chief executive must, when considering the licensee's application for restoration of the licence, have regard to any objection received about the

[18] Section 365 (Definitions for div 3)

restoration of the licence and not previously considered and the licensee's submission, if any, about the objection.

Chief executive may restore or refuse to restore licence

64.(1) The chief executive must consider the restoration application and may restore or refuse to restore the licence.

(2) The chief executive may restore the licence only if the chief executive is satisfied—

(a) the licensee is a suitable person; and—

(i) if the licensee 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 licensee carries on business in conjunction is a suitable person; and

(ii) if the licensee is a corporation—each executive officer of the corporation is a suitable person; and

(b) the application is properly made; and

(c) the licensee has, as a licensee or salesperson, actively carried out the functions authorised under the licence for a period, and within the period, prescribed under a regulation; and

(d) the licensee meets the eligibility requirements, other than eligibility requirements of an educational nature, for the licence.

(3) For subsection (2)(b), an application is properly made only if it complies with section 62[19] and is accompanied by the things mentioned in that section.

(4) If the chief executive refuses the application, the chief executive must give the applicant an information notice about the decision.

(5) If the chief executive restores the licence, the licence is taken to have been renewed on the day it would, apart from section 65, have expired.

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19 Section 62 (Application for restoration)

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

65. If an application is made under section 62,[20] 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 restoration is decided under section 64 or taken to have been withdrawn under section 34(3).[21]

PART 10—DEALINGS WITH LICENCES

Division 1—Substitute licences

Appointment of substitute licensee—principal licensee—individual

66.(1) A principal licensee may appoint an adult person as the licensee's substitute licensee for a period of not more than 30 days if—

(a) the licensee will be absent from the licensee's registered office for the period; and

(b) the adult person consents to the appointment.

(2) The principal licensee must ensure an appointment under subsection (1) and the person's consent to the appointment are—

(a) in writing and specify 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.

(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

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20 Section 62 (Application for restoration)

21 Section 34 (Requirement to give chief executive information or material about suitability)

for the appointment of a nominated person as the licensee's substitute licensee.

Maximum penalty—200 penalty units.

(4) 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

(ii) sufficiently qualified to perform the licensee's functions during the period; and

(c) the fee prescribed under a regulation.

(5) In this section—

"principal licensee" means a principal licensee who is an individual and includes—

(a) for a licensee who is a patient within the meaning of the *Mental Health Act 1974*—the committee of the licensee's estate or the public trustee;

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

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

67.(1) This section applies if an employed licensee who is in charge of a 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 short period, the principal licensee who employs the employed licensee may appoint an adult person as the employed licensee's substitute licensee for the period if the adult person 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 specify 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 an extended period, the principal licensee who employs the employed licensee must apply to the chief executive for the appointment or the extension of the appointment of 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

(ii) sufficiently qualified to perform the employed licensee's functions during the period; and

(c) the fee prescribed under a regulation.

(6) In this section—

"extended period", of absence, means a period of absence more than 30 days.

"principal licensee" includes—

(a) for a licensee who is a patient within the meaning of the *Mental Health Act 1974*—the committee of the licensee's estate or the public trustee;

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

"short period", of absence, means a period of absence of not more than 30 days.

Appointment of substitute licensee—pastoral house manager in charge of a licensee's business at a place

68.(1) This section applies if a pastoral house manager who is in charge of a pastoral house's business at a place will be absent from the place for any reason, other than the manager's resignation or termination of employment.

(2) If the pastoral house manager is absent from the place for a short period, the pastoral house that employs the manager may appoint an adult person as the manager's substitute licensee for the period if the adult person consents to the appointment.

(3) The pastoral house must ensure an appointment under subsection (2) and the person's consent to the appointment are—

(a) in writing and specify the period of appointment; and

(b) kept at the pastoral house's registered office; and

(c) made available for immediate inspection by an inspector who asks to see them.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[22]—100 penalty units; or

(b) for a corporation—500 penalty units.

(4) If the pastoral house manager will be absent from the place for an extended period, the pastoral house that employs the manager must apply to the chief executive for the appointment or the extension of the appointment of the nominated person as the manager's substitute licensee.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529—100 penalty units; or

(b) for a corporation—500 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

[22] Section 529 (Executive officers must ensure corporation complies with Act)

(ii) sufficiently qualified to perform the manager's functions during the period; and

(c) the fee prescribed under a regulation.

(6) In this section—

"extended period", of absence, means a period of absence more than 42 days.

"short period", of absence, means a period of absence of not more than 42 days.

Chief executive may appoint or refuse to appoint substitute licensee

69.(1) The chief executive may appoint a nominated person mentioned in section 66(3), 67(4) or 68(4) as a licensee's substitute licensee only if the chief executive is satisfied that the person is—

(a) a suitable person to hold a licence; and

(b) sufficiently qualified to perform the licensee's functions during the period the licensee is unable to perform the functions.

(2) If the chief executive refuses the application, the chief executive must give the licensee an information notice about the decision.

(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.

Substitute licensee

70.(1) On appointment, a substitute licensee must act as substitute for the licensee and is taken to be the licensee during the period of 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.

(3) The appointment of the substitute licensee ends if—

(a) the period of appointment ends; or

(b) the principal licensee gives written notice to end the appointment from a date stated in the notice—

(i) for a substitute licensee appointed under section 66(1), 67(2) or 68(2)—to the substitute licensee; or

(ii) for a substitute licensee appointed under section 69—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 66(1), 67(2) or 68(2)—to the principal licensee making the appointment; or

(ii) for a substitute licensee appointed under section 69—to the chief executive and the principal licensee making 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.

Limitation on period of substitution

71.(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) A pastoral house may not appoint a substitute licensee for a pastoral house manager for more than 12 weeks in any period of 12 months.

(4) The chief executive may not appoint a substitute licensee for any licensee for more than 26 weeks in any period of 12 months.

Division 2—General

Transfer of licence prohibited

72. A licence may not be transferred.

Amendment of licence conditions

73.(1) The chief executive may amend the conditions of a licence—

(a) on the licensee's application; or

(b) on the order of an agents and motor dealers board;[23] or

(c) on the chief executive's own initiative.

(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 making an amendment under subsection (1)(a), the chief executive must be satisfied the licensee meets the eligibility requirements the chief executive specifies as 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 licensee—

  (i) of the details 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—

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23 A board may deal with the conditions of a person's licence under section 480 (Orders agents and motor dealers board may make after disciplinary charge hearing).

(a) to avoid potential claims against the fund; or

(b) to ensure compliance with this Act; or

(c) for another reason prescribed under a regulation.

(6) If the chief executive decides to amend the conditions of a licence, the chief executive must give written notice of the amendment to the licensee.

(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—the stated day.

(8) If the chief executive refuses to make an amendment requested under subsection (1)(a), the chief executive must give the applicant an information notice about the decision.

Licensee to return licence for amendment of conditions

74.(1) If the chief executive amends the conditions of a licence under section 73, the chief executive may ask the licensee to produce the licence for amendment within a stated period of not less than 14 days.

(2) The licensee must comply with a request under subsection (1).

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

Surrender of licence

75.(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.

Licence may be deactivated

76.(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 a function 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 in relation to the licence for the balance of the licence's term.

(6) A deactivated licence may be renewed under section 58[24] or restored under section 62[25] as a deactivated licence at a reduced fee prescribed under the regulations.

(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 prescribed under a regulation for the issue of the licence.

(9) A request under subsection (7) must be made in the approved form and be accompanied by the fee prescribed under a regulation.

PART 11—IMMEDIATE SUSPENSION AND CANCELLATION OF LICENCES

Immediate suspension

77.(1) This section applies if—

(a) the chief executive considers, on reasonable grounds, that an irregularity or deficiency exists in a licensee's trust account; or

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24 Section 58 (Application for renewal)

25 Section 62 (Application for restoration)

(b) a receiver is appointed under section 384[26] over property—

(i) held by a licensee; or

(ii) held by another person for a licensee; or

(iii) recoverable by a licensee.

(2) The chief executive may, whether or not disciplinary proceedings have been started under this Act—

(a) suspend the licensee's licence; or

(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) The licence may be suspended for the period (not more than 28 days), and on the conditions, the chief executive decides.

(4) The chief executive must give written notice of the suspension to the licensee stating the grounds for the suspension.

Immediate cancellation

78. A licensee's licence is cancelled by force of this section if the licensee—

(a) is convicted of a serious offence; or

(b) if the licensee is an individual—is an undischarged bankrupt; or

(c) if the licensee is a corporation—has gone into liquidation.

[26] Section 384 (When receiver may be appointed)

PART 12—GENERAL PROVISIONS ABOUT LICENCES

Form of licence

79.(1) A licence must be issued in the approved form.

(2) However, the chief executive may approve—

(a) a form of licence for office display purposes; and

(b) a form of licence for personal identification purposes.

Examples—

1. A form of licence for office display purposes may be in the form of a certificate that may be framed and displayed in an office.

2. A form of licence for personal identification purposes may be in the form of a small photo identification card suitable for carrying easily on one's person.

(3) The chief executive may also issue a form of licence for a corporation endorsed with the categories of agents and motor dealers licence issued in the name of the corporation.

(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) for a personal identification licence—a recent photograph of the licensee;

(e) other particulars that may be prescribed under a regulation.

Display of licence

80. A principal licensee must display the licensee's licence at the licensee's registered office in the way prescribed under a regulation.

Maximum penalty—100 penalty units.

Term of licence

81. A licence is issued for the term, not more than 1 year, decided by the chief executive.

Replacement licences

82.(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 an 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 lost, stolen, destroyed or damaged licence.

Register of licences

83.(1) The chief executive must keep a register of licences and applications for licences (**"licence register"**).

(2) The publicly available part of the licence register must contain the following details—

(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 person 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, cancellation or revocation of the licensee's licence.

(3) A person may on payment of any fee that may be prescribed under a regulation—

(a) request a search of, or for, an entry in the publicly available part of the register at the department's head office when it is open to the public; and

(b) obtain a copy of details of the entry.

(4) The register—

(a) may be a mechanical, electronic or other device suitable for containing information or documents; and

(b) may contain information or documents in a physical, electronic, digital or other form.

(5) In this section—

"contain" includes record and store.

Licensees to notify chief executive of changes in circumstances

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

Maximum penalty—100 penalty units.

(2) For this section—

"prescribed change" means a change prescribed under a regulation.

CHAPTER 3—RESTRICTED LETTING AGENTS AND THEIR EMPLOYEES

PART 1—RESTRICTED LETTING AGENT

Division 1—Restricted letting agent's licence

What a restricted letting agent's licence authorises

85.(1) A restricted letting agent's licence authorises the holder of the licence (**"restricted letting agent"**) to perform the following functions as an agent for others for reward—

(a) letting lots in a building complex;

(b) collecting rents for lots in a building complex.

(2) A restricted letting agent may perform the functions in the carrying on of a business, either alone or with others, or as an employee of someone else.

(3) The chief executive must, by condition of the licence, limit the performance of the functions by the restricted letting agent to a stated building complex.

(4) However, the chief executive may authorise the restricted letting agent to perform the functions in not more than 1 additional building complex if the chief executive is satisfied—

(a) the building complex is on land contiguous to the land on which the first building complex is situated; and

(b) the restricted letting agent has the approval of the body corporate of the additional building complex to carry on a business of letting lots in the complex.

(5) For subsection (4)(a), 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 2—Responsibilities of persons in charge of licensee's business for employees

Responsibility for acts and omissions of restricted letting agent (employee)

86.(1) A restricted letting agent who is a principal licensee must take reasonable steps to ensure each restricted letting agent (employee) employed by the agent is properly supervised, acts only within the scope of the employee's authority and complies with this Act.

(2) A restricted letting agent who is an employed licensee in charge of a licensee's business at a place must take reasonable steps to ensure each restricted letting agent (employee) employed at the place is properly supervised, acts only within the scope of the employee's authority and complies with this Act.

(3) A restricted letting agent who fails to meet the agent's obligations under subsection (1) or (2) is liable to disciplinary action under chapter 11.[27]

[27] Chapter 11 (Compliance, discipline and claims against the fund)

PART 2—RESTRICTED LETTING AGENTS (EMPLOYEE)

Division 1—Introduction

Meaning of "restricted letting agent (employee)"

87.(1) A **"restricted letting agent (employee)"** is a person employed by a restricted letting agent to perform any of the functions of a restricted letting agent.

(2) To prevent any doubt, it is declared that a person employed by a restricted letting agent is not a restricted letting agent (employee) if the person's duties are only secretarial or clerical.

Division 2—Provisions about employment

Persons not eligible for employment as restricted letting agents (employee)

88.(1) Each of the following persons is not eligible to be employed as a restricted letting agent (employee)—

(a) a person who has not turned 18 years;

(b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence;

(c) a person who is subject to an order of a Magistrates Court or any other court or a regulatory or disciplinary body, either within or outside Queensland, declaring the person ineligible to be employed as, or not to be entitled to perform the functions of, a restricted letting agent (employee), real estate salesperson or pastoral house salesperson;

(d) a person whose name is entered in the register of ineligible persons as ineligible to be employed as a restricted letting agent (employee), real estate salesperson or pastoral house salesperson;

(e) a restricted letting agent;

(f) a corporation.

(2) A person must not knowingly and falsely represent to someone else that the person is eligible to be employed as a restricted letting agent (employee).

Maximum penalty for subsection (2)—200 penalty units or 1 year's imprisonment.

Employment as restricted letting agent (employee)

89. A restricted letting agent must not employ someone (**"proposed employee"**) as a restricted letting agent (employee) unless the letting agent has—

(a) sighted a record, not more than 1 year old, of the proposed employee's criminal history and is satisfied, after sighting the record, that the person is not ineligible under section 88(1)(b) to be employed as a restricted letting agent (employee); and

(b) taken reasonable action, including action to inspect the register of ineligible persons,[28] to satisfy himself or herself that the proposed employee is not ineligible to be employed as a restricted letting agent (employee).

Maximum penalty—200 penalty units.

Restricted letting agent must give employees an employment authority

90.(1) Immediately after the proposed employee starts employment, the restricted letting agent must give the restricted letting agent (employee) an employment authority.

Maximum penalty—200 penalty units.

(2) In this section—

"employment authority", for a restricted letting agent (employee), means a statement clearly specifying the functions of a restricted letting agent

[28] The chief executive is required to keep a register of ineligible persons under section 540.

the employee is authorised by the letting agent to perform for the letting agent during the employee's employment by the letting agent.

Court may declare person as ineligible person

91.(1) The court may declare by order a person to be a person who is not eligible to be employed as a restricted letting agent (employee).

(2) The court may make an order under subsection (1) only if it is satisfied—

(a) the person has contravened a code of conduct made under part 3, division 4;[29] or

(b) the person has been convicted of an offence against this Act and, having regard to the nature of the offence, the court considers it is appropriate to make the order; or

(c) the person has been convicted of an offence mentioned in section 88(1)(b).[30]

(3) If an order is made under subsection (1), the person's name and the other details that may be prescribed under a regulation must be entered in the register of ineligible persons.

(4) The court may make an order subject to stated conditions and may vary or revoke the order at any time.

(5) An order may be made—

(a) on conviction of a person of an offence mentioned in subsection (2)(b) or (c)—on the prosecutor's application or by the court on its own initiative; or

(b) at any time—on the application of the chief executive.

[29] Part 3 (Conduct provisions), division 4 (Code of conduct)

[30] Section 88 (Persons not eligible for employment as restricted letting agents (employee))

Division 3—Functions of restricted letting agents (employee)

Functions of restricted letting agent (employee)

92. A restricted letting agent (employee) for a restricted letting agent may, as the employee of the letting agent and subject to the person's employment authority under section 90,[31] perform the functions the letting agent is authorised to perform under this Act.

PART 3—CONDUCT PROVISIONS

Division 1—Licensee to be in charge of a licensee's business

Carrying on of business under restricted letting agent's licence

93.(1) An individual who carries on the business of a restricted letting agent with others is not required to hold a restricted letting agent's licence or real estate agent's licence if—

(a) at least 1 of the persons with whom the individual carries on business is a restricted letting agent or real estate agent; and

(b) the individual does not perform the functions of a restricted letting agent; and

(c) the individual is a suitable person to hold a licence.

(2) A restricted letting agent who is an individual must reside permanently in the building complex or, if the letting agent is authorised to perform functions in relation to 2 building complexes, 1 of the building complexes for which the letting agent is authorised to perform functions.

Maximum penalty—200 penalty units.

(3) A restricted letting agent that is a corporation must ensure that an individual who will perform the functions of a restricted letting agent for the

31 Section 90 (Restricted letting agent must give employees an employment authority)

corporation resides permanently in the building complex or, if the letting agent is authorised to perform functions for 2 building complexes, 1 of the building complexes for which the letting agent is authorised to perform functions.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[32]—200 penalty units; or

(b) for a corporation—1 000 penalty units.

(4) Subsections (2) and (3) do not apply to a restricted letting agent whose licence is deactivated.

Licensee to be in charge of a restricted letting agent's business at a place

94.(1) A restricted letting agent who is an individual and a principal licensee must be in charge of the agent's business at the agent's registered office.[33]

Maximum penalty—200 penalty units.

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

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[34]—200 penalty units; or

(b) for a corporation—1 000 penalty units.

(3) If a restricted letting agent who is a principal licensee is authorised under the letting agent's licence to carry on a business of letting lots in 2 building complexes, and has a place of business in each building complex, the restricted letting agent must ensure that another individual who is a restricted letting agent or real estate agent is in charge of the agent's

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32 Section 529 (Executive officers must ensure corporation complies with Act)

33 See section 101 (Registered office).

34 Section 529 (Executive officers must ensure corporation complies with Act)

business at the other place.

Maximum penalty—200 penalty units.

(4) To remove any doubt, it is declared that a restricted letting agent or real estate agent can not be in charge of a restricted letting agent's business at more than 1 place of business.

Division 2—Appointment

Appointment of restricted letting agent

95.(1) A restricted letting agent who is asked by a person (**"client"**) to perform a function (**"service"**) for the client must not act for the client unless the client first appoints the letting agent in writing.

Maximum penalty—200 penalty units.

(2) The appointment may be for the performance of—

(a) a particular service (**"single appointment"**); or

(b) a number of services over a period (**"continuing appointment"**).

(3) The appointment must—

(a) state the service to be performed by the letting agent and how it is to be performed; and

(b) state—

(i) in the way prescribed under a regulation—that fees, charges and commission payable for the service are negotiable; and

(ii) if commission is payable and expressed as a percentage of rent—the amount of commission expressed in dollars based on the listed rental charge; and

(c) state—

(i) the fees, charges and commission payable for the service; and

(ii) the expenses, including advertising expenses, the letting agent is authorised to incur in connection with the performance of the service; and

(iii) any condition, limitation or restriction on the performance of the service; and

(d) state when the fees, charges and commission for the service become payable; and

(e) if a service to be performed is the letting of property and commission is payable in relation to the service and expressed as a percentage—state that the commission is worked out only on the actual amount of rent collected; and

(f) state any other information that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(4) A continuing appointment must state—

(a) the date the appointment ends; and

(b) that the appointment may be revoked at any time by signed writing given to the other party.

Maximum penalty—200 penalty units.

(5) Subsection (3)(b)(ii) does not apply to a continuing appointment.

(6) The appointment must be signed by the client and the letting agent or someone authorised or apparently authorised to sign for the letting agent.

(7) The letting agent must give a copy of the signed appointment to the client.

Maximum penalty for subsection (7)—200 penalty units.

Division 3—Recovery of commission or reward

Restriction on commission payable as a percentage

96.(1) This section applies to a restricted letting agent who performs a service of letting property for someone and claims commission worked out as a percentage for the service.

(2) The restricted letting agent must not claim commission worked out as a percentage of an amount more than the actual amount of rent collected.

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

Restriction on remedy for commission or reward

97.(1) A person must not sue for, or recover or retain, a commission, reward or expense for the performance of a function as a restricted letting agent unless—

(a) at the time the function was performed—

(i) the person held a restricted letting agent's licence; and

(ii) the person was authorised under the person's licence to perform the function; and

(b) the person has been properly appointed under division 2[35] by the person to be charged with the commission, reward or expense.

Maximum penalty—200 penalty units.

(2) A person must not sue for, or recover or retain, a commission or reward for the performance of a function as a restricted letting agent that is more than—

(a) the amount of the commission or reward stated in the appointment given under section 95(3);[36] or

(b) if commission rates for the performance of the function have been prescribed under a regulation—the lesser of the amount stated in the appointment for the performance of the function and the commission allowed under the regulation for the performance of the function.

Maximum penalty—200 penalty units.

(3) A person must not sue for, or recover or retain, expenses for the performance of a function as a restricted letting agent that are more than the lesser of the following amounts—

(a) the amount of the expenses stated in the appointment given under

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35 Division 2 (Appointment)

36 Section 95 (Appointment of restricted letting agent)

section 95(3) and actually expended;

(b) if the amount of expenses that may be incurred in relation to the performance of the function is limited under a regulation—the amount allowed under the regulation.

Maximum penalty—200 penalty units.

Excess commission etc. to be repaid

98.(1) This section applies if—

(a) a person is convicted of an offence against section 96(2) or 97;[37] and

(b) the court before whom the person is convicted is satisfied on the balance of probabilities the person, in connection with the offence, has recovered or retained from someone (**"client"**) for whom the person performed a function 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 for the offence.

(4) The order may be filed in a court having jurisdiction for the recovery of a debt of an equal amount and enforced as a judgment of that court.

Division 4—Code of conduct

Code of conduct

99. A regulation may prescribe a code of conduct about restricted letting agent practice that may include the following—

(a) setting conduct standards for restricted letting agents and restricted letting agents (employee);

(b) establishing principles for fair trading;

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[37] Section 96 (Restriction on commission payable as a percentage) or 97 (Restriction on remedy for commission or reward)

(c) providing for a system of complaint resolution.

Complaints about conduct

100.(1) A person aggrieved by the conduct of a restricted letting agent or restricted letting agent (employee) may complain in writing to the chief executive of the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action about the conduct allowed under this Act.[38]

(3) The investigation may take place and action may be taken even though the person is no longer a restricted letting agent or restricted letting agent (employee).

PART 4—GENERAL

Registered office

101. A restricted letting agent's **"registered office"** is—

(a) for a restricted letting agent who is a principal licensee—

(i) the place the letting agent specifies in the letting agent's application for a restricted letting agent's licence as the letting agent's principal place of business; or

(ii) another place notified to the chief executive by the letting agent in the approved form as the letting agent's principal place of business; and

(b) for a restricted letting agent who is an employed licensee—

(i) the place the letting agent specifies in the letting agent's application for a restricted letting agent's licence as the letting agent's business address; or

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[38] Breach of a code of conduct is a ground for starting disciplinary proceedings under section 438 (Grounds for starting disciplinary proceeding).

(ii) another place notified to the chief executive by the letting agent in the approved form as the letting agent's business address.

Restricted letting agent to notify chief executive of change in place of business etc.

102.(1) A restricted letting agent who is a principal licensee must notify the chief executive in the approved form of—

(a) any change in the letting agent's registered office within 14 days of the change; or

(b) the closure of any place where the letting agent carries on business within 14 days of the closure; or

(c) the opening of any place where the letting agent carries on business within 14 days of the opening.

Maximum penalty—200 penalty units.

(2) A restricted letting agent who is a principal licensee must notify the chief executive of any change in, or revocation of, the body corporate's approval to the letting agent to carry on the business of letting lots for a building complex within 14 days of the change or revocation.

Maximum penalty—200 penalty units.

(3) A restricted letting agent who is an employed licensee must notify the chief executive in the approved form of any change in the letting agent's registered office within 14 days of the change.

Maximum penalty—200 penalty units.

Publication of name of licensee

103.(1) A restricted letting agent who is a principal licensee must display at each place the restricted letting agent carries on business, in the way that may be prescribed under a regulation—

(a) the letting agent's name; and

(b) if the letting agent is not the person in charge of the letting agent's business at the place—the name of the restricted letting agent who is in charge of the letting agent's business at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(2) A restricted letting agent must not publish in a newspaper or elsewhere an advertisement for the purpose of the letting agent's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

Principal licensee must keep employment register

104.(1) A restricted letting agent who is a principal licensee must keep a register (**"employment register"**) at each place where the letting agent carries on business.

Maximum penalty—200 penalty units.

(2) The restricted letting agent must enter in the employment register—

(a) the name, and the other details that may be prescribed under a regulation, of each person (**"employee"**) who is employed as a restricted letting agent or restricted letting agent (employee) at the place; and

(b) the functions the employee is authorised to perform for the letting agent during the employee's employment by the letting agent.[39]

Maximum penalty—200 penalty units.

(3) The restricted letting agent must—

(a) enter the details about each employee and, if the employee is a restricted letting agent (employee), the functions the employee is authorised to perform, immediately after the employee is employed at the place; and

(b) if there is a change in an employee's details or functions—correct the entry in the way prescribed under the regulations immediately

[39] The restricted letting agent must give the employee a statement under section 90 (Restricted letting agent must give employees an employment authority) clearly specifying the employee's functions.

after the change happens.

Maximum penalty—200 penalty units.

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

PART 5—OFFENCES

Acting as restricted letting agent

105. A person must not, as an agent for someone else for reward, perform a function that may be done under the authority of a restricted letting agent's licence unless the person—

(a) holds a restricted letting agent's licence and the performance of the function is authorised under the person's licence; or

(b) is otherwise permitted under an Act to perform the function.

Maximum penalty—200 penalty units or 2 years imprisonment.

Restricted letting agent must not act for more than 1 party

106.(1) A restricted letting agent must not accept appointment to act for more than 1 party to a transaction.

Maximum penalty—200 penalty units.

(2) If a restricted letting agent accepts appointment to act for more than 1 party to a transaction, each appointment is ineffective from the beginning.

Example of subsection (2)—

Accepting appointment to act for both unit owner and tenant.

Production of licence

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

Maximum penalty—100 penalty units.

Employment of ineligible persons in restricted letting agent's business

108.(1) A restricted letting agent must not employ—

(a) as a restricted letting agent (employee)—a person the letting agent knows, or ought to know, is not eligible to be employed as a restricted letting agent (employee) under section 88;[40] or

(b) in any capacity in a restricted letting agent's business—an ineligible person.

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

(2) Subsection (1)(b) does not apply if—

(a) the chief executive approves the person's employment in a stated capacity in writing; and

(b) the person is employed in that capacity and complies with any conditions imposed by the chief executive in the approval.

(3) A person who is employed as a restricted letting agent (employee) knowing that he or she is an ineligible person commits an offence.

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

(4) A person who is employed in a capacity in a restricted letting agent's business knowing that he or she is not eligible to be employed in the business in that capacity commits an offence, unless—

(a) the person's employment in that capacity is approved by the chief executive; and

(b) the person complies with any conditions imposed by the chief executive in the approval.

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

(5) In this section—

"ineligible person" means a person whose name is entered in the register of ineligible persons.

40 Section 88 (Persons not eligible for employment as restricted letting agents (employee))

CHAPTER 4—REAL ESTATE AGENTS AND THEIR SALESPERSONS

PART 1—REAL ESTATE AGENTS

Division 1—Real estate agent's licence

What a real estate agent's licence authorises

109.(1) A real estate agent's licence authorises the holder of the licence (**"real estate agent"**) to perform the following functions as an agent for others for reward—

(a) to buy, sell, exchange, or let houses, land, or estates or interests in houses, land, or estates;

(b) to buy, sell, exchange, or let businesses or interests in businesses;

(c) to collect rents;

(d) to buy, sell or exchange livestock or an interest in livestock;

(e) to negotiate for the buying, selling, exchanging, or letting of something mentioned in paragraph (a) or (b);

(f) to negotiate for the buying, selling or exchanging of something mentioned in paragraph (d).

(2) A real estate agent may perform the functions in the carrying on of a business, either alone or with others, or as an employee of someone else.

Division 2—Responsibilities of persons in charge of a licensee's business for salespersons

Responsibility for acts and omissions of salespersons

110.(1) A real estate agent who is a principal licensee must take reasonable steps to ensure each real estate salesperson employed by the agent is properly supervised, acts only within the scope of the person's authority and complies with this Act.

(2) A real estate agent who is an employed licensee in charge of a licensee's business at a place of business must take reasonable steps to ensure each real estate salesperson employed at the place is properly supervised, acts only within the scope of the person's authority and complies with this Act.

(3) A real estate agent who fails to meet the agent's obligations under subsection (1) or (2) is liable to disciplinary action under chapter 11.[41]

PART 2—REAL ESTATE SALESPERSONS

Division 1—Introduction

Meaning of "real estate salesperson"

111.(1) A **"real estate salesperson"** is a person employed by a real estate agent to perform any of the functions of a real estate agent.

(2) To prevent any doubt, it is declared that a person employed by a real estate agent is not a real estate salesperson if the person's duties are only secretarial or clerical.

Division 2—Provisions about employment

Persons not eligible for employment as real estate salespersons

112.(1) Each of the following persons is not eligible to be employed as a real estate salesperson—

(a) a person who has not turned 18 years;

(b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence;

(c) a person who is subject to an order of a Magistrates Court or any

41 Chapter 11 (Compliance, discipline and claims against the fund)

other court or a regulatory or disciplinary body, either within or outside Queensland, declaring the person ineligible to be employed as, or not to be entitled to perform the functions of, a real estate salesperson, restricted letting agent or pastoral house salesperson (employee);

(d) a person whose name is entered in the register of ineligible persons as ineligible to be employed as a real estate salesperson, restricted letting agent or pastoral house salesperson (employee);

(e) a restricted letting agent;

(f) a corporation.

(2) A person must not knowingly and falsely represent to someone else that the person is eligible to be employed as a real estate salesperson.

Maximum penalty for subsection (2)—200 penalty units or 1 year's imprisonment.

Employment as real estate salespersons

113. A real estate agent must not employ someone (**"proposed employee"**) as a real estate salesperson unless the agent has—

(a) sighted a record, not more than 1 year old, of the proposed employee's criminal history and is satisfied, after sighting the record, that the person is not ineligible under section 112(1)(b) to be employed as a real estate salesperson; and

(b) taken reasonable action, including action to inspect the register of ineligible persons,[42] to satisfy himself or herself that the proposed employee is not ineligible to be employed as a real estate salesperson.

Maximum penalty—200 penalty units.

Real estate agent must give salespersons "employment authority"

114.(1) Immediately after the real estate salesperson starts employment,

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42 The chief executive is required to keep a register of ineligible persons under section 540.

the real estate agent must give the salesperson an employment authority.

Maximum penalty—200 penalty units.

(2) In this section—

"employment authority", for a real estate salesperson, means a statement clearly specifying the functions of a real estate agent the salesperson is authorised by the agent to perform for the agent during the salesperson's employment by the agent.

Court may declare person as ineligible person

115.(1) A court may declare by order a person to be a person who is not eligible to be employed as a real estate salesperson.

(2) The court may make an order under subsection (1) only if it is satisfied—

(a) the person has contravened a code of conduct made under part 3, division 8;[43] or

(b) the person has been convicted of an offence against this Act and, having regard to the nature of the offence, the court considers it is appropriate to declare the person to be a person who is not eligible to be employed as a real estate salesperson; or

(c) the person has been convicted of an offence mentioned in section 112(1)(b).[44]

(3) If an order is made under subsection (1), the person's name and the other details that may be prescribed under a regulation must be entered in the register of ineligible persons.

(4) The court may make an order subject to stated conditions and may vary or revoke the order at any time.

(5) An order may be made—

(a) on conviction of a person of an offence mentioned in subsection (2)(b) or (c)—on the prosecutor's application or by the

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[43] Part 3 (Conduct provisions), division 8 (Code of conduct)

[44] Section 112 (Persons not eligible for employment as real estate salespersons)

court on its own initiative; or

(b) at any time—on the application of the chief executive.

Division 3—Functions of real estate salespersons

Functions of real estate salesperson

116. A real estate salesperson for a real estate agent may, as the employee of the real estate agent and subject to the person's employment authority under section 114,[45] perform the functions the real estate agent is authorised to perform under this Act.

PART 3—CONDUCT PROVISIONS

Division 1—Licensee to be in charge of a licensee's business

Carrying on of business under real estate agent's licence

117. An individual who carries on the business of a real estate agent with others is not required to hold a real estate agent's licence if—

(a) at least 1 of the persons with whom the individual carries on business is a real estate agent; and

(b) the individual does not perform the functions of a real estate agent; and

(c) the individual is a suitable person to hold a licence.

Licensee to be in charge of a real estate agent's business at a place

118.(1) A real estate agent who is an individual and a principal licensee must—

45 Section 114 (Real estate agent must give salespersons "employment authority")

(a) be in charge of agent's business at the agent's registered office;[46] and

(b) if the agent has more than 1 place of business—ensure that at each other place of business a real estate agent who is an individual is in charge of the agent's business at the place.

Maximum penalty—200 penalty units.

(2) A real estate agent that is a corporation and a principal licensee (**"corporate agent"**) must ensure that—

(a) the individual in charge of the corporate agent's business at its registered office is a real estate agent; and

(b) if the corporate agent has more than 1 place of business—at each other place of business an individual who is a real estate agent is in charge of the corporate agent's business at the place.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[47]—200 penalty units; or

(b) for a corporation—1 000 penalty units.

(3) To prevent any doubt, it is declared that a real estate agent can not be in charge of a real estate agent's business at more than 1 place.

Division 2—Appointment

Appointment of real estate agent—general

119.(1) A real estate agent who is asked by a person (**"client"**) to perform a function (**"service"**) for the client must not act for the client unless the client first appoints the agent in writing.

Maximum penalty—200 penalty units.

(2) The appointment may be for the performance of—

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46 See section 145 (Registered office).

47 Section 529 (Executive officers must ensure corporation complies with Act)

(a) a particular service (**“single appointment”**); or

(b) a number of services over a period (**“continuing appointment”**).

(3) The appointment must—

(a) state the service to be performed by the real estate agent and how it is to be performed; and

(b) state—

(i) in the way prescribed under a regulation—that fees, charges and commission payable for the service are negotiable; and

(ii) if commission is payable and expressed as a percentage of sale price or rent—the amount of commission expressed in dollars based on the listed sale price or rental charge or, if the sale is to be by way of auction, the reserve price; and

(c) state—

(i) the fees, charges and commission payable for the service; and

(ii) the expenses, including advertising and marketing expenses, the agent is authorised to incur in connection with—

(A) for a single appointment—the performance of the service; or

(B) for a continuing appointment—the performance of each service or category of service; and

(iii) any condition, limitation or restriction on the performance of the service; and

(d) state when the fees, charges and commission for the service become payable; and

(e) if a service to be performed is the sale or letting of property and commission is payable in relation to the service and expressed as a percentage—state that the commission is worked out only on the actual sale price of the property or the amount of rent collected; and

(f) if the appointment is for a sole or exclusive agency—state the date the appointment ends; and

(g) state any other information that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(4) A continuing appointment must state—

(a) the date the appointment ends; and

(b) the appointment may be revoked at any time by signed writing given to the other party.

Maximum penalty—200 penalty units.

(5) Subsection (3)(b)(ii) does not apply to a continuing appointment.

(6) The appointment must be signed by the client and the real estate agent or someone authorised or apparently authorised to sign for the agent.

(7) The real estate agent must give a copy of the signed appointment to the client.

Maximum penalty—200 penalty units.

(8) If an appointment under this section authorises a sale by auction, an appointment under section 207[48] is not required.

(9) This section does not apply if the service to be performed is the sale of livestock.

Appointment of real estate agent—sole and exclusive agencies

120.(1) If the appointment is for a sole or exclusive agency, before the appointment is signed, the real estate agent must give the client a notice in the approved form stating the following—

(a) the proposed term of the appointment;

(b) the term is negotiable up to a maximum term of 90 days;

(c) whether the appointment is under a sole agency or an exclusive agency;

[48] Section 207 (Appointment of auctioneer—general)

(d) the difference between sole agency and exclusive agency;[49]

(e) the consequences for the client if the property is sold by someone other than the agent during the term of the sole or exclusive agency.

Maximum penalty—200 penalty units.

(2) The appointment may include provision that, at the end of the term of a sole or exclusive agency, the appointment of the agent continues under an open listing[50] that may be ended at any time by either party.

(3) The notice is not required to state that the term of appointment is negotiable up to a maximum term of 90 days if the notice relates to property prescribed under a regulation for this subsection.

(4) The agent's requirement to give the notice under this section is in addition to the agent's requirement to obtain an appointment under section 119.

Real estate agent may be reappointed

121.(1) A real estate agent may be reappointed for a sole or exclusive agency for 1 or more further terms of not more than 90 days.

(2) The reappointment must not be made until 14 days or a shorter period before the term of the sole or exclusive agency ends.

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

Avoidance of appointments

122.(1) The appointment of a real estate agent is ineffective from the beginning if—

(a) the notice mentioned in section 120[51] is not given before the appointment is signed; or

(b) the term of an appointment for a sole or exclusive agency is more

49 See section 19 (Difference between "sole agency" and "exclusive agency")

50 See section 18 (Meaning of "open listing")

51 Section 120 (Appointment of real estate agent—sole and exclusive agencies)

than 90 days.

(2) Subsection (1)(b) does not apply to an appointment for property prescribed for section 120(3).

(3) The reappointment of an agent for a further term of sole or exclusive agency is ineffective if it is made contrary to section 121(2).

Division 3—Recovery of commission or reward

Restriction on commission payable as a percentage

123.(1) This section applies to a real estate agent who performs a service of selling or letting property for someone and claims commission worked out as a percentage for the service.

(2) The real estate agent must not claim commission worked out as a percentage of an amount more than the actual sale price of the property or the amount of rent collected.

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

Restriction on remedy for commission or reward

124.(1) A person must not sue for, or recover or retain, a commission, reward or expense for the performance of a function as a real estate agent unless—

(a) at the time the function was performed—

(i) the person held a real estate agent's licence; and

(ii) the person was authorised under the person's licence to perform the function; and

(b) the person has been properly appointed under division 2 by the person to be charged with the commission, reward or expense.

Maximum penalty—200 penalty units.

(2) A person must not sue for, or recover or retain, a commission or reward for the performance of a function as a real estate agent that is more than—

(a) the amount of the commission or reward stated in the appointment given under section 119(3);[52] or

(b) if commission rates for the performance of the function have been prescribed under a regulation—the lesser of the amount stated in the appointment for the performance of the function and the commission allowed under the regulation for the performance of the function.

Maximum penalty—200 penalty units.

(3) A person must not sue for, or recover or retain, expenses for the performance of a function as a real estate agent that are more than the lesser of the following amounts—

(a) the amount of the expenses stated in the appointment given under section 119(3) and actually expended;

(b) if the amount of expenses that may be incurred in relation to the performance of the function is limited under a regulation—the amount allowed under the regulation.

Maximum penalty—200 penalty units.

Excess commission etc. to be repaid

125.(1) This section applies if—

(a) a person is convicted of an offence against section 123(2) or 124;[53] and

(b) the court before whom the person is convicted is satisfied on the balance of probabilities the person, in connection with the offence, has recovered or retained from someone (**"client"**) for whom the person performed a function 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

[52] Section 119 (Appointment of real estate agent—general)

[53] Section 123 (Restriction on commission payable as a percentage) or 124 (Restriction on remedy for commission or reward)

the conviction.

(4) The order may be filed in a court having jurisdiction for the recovery of a debt of an equal amount and enforced as a judgment of that court.

Division 4—Interests in property

Definition for div 4

126. In this division—

"obtain" includes being in any way concerned in obtaining.

Beneficial interest—options

127.(1) This section applies to property placed by a person (**"client"**) with a real estate agent for sale.

(2) The real estate agent commits an offence if any of the following persons obtain from the client an option to purchase the property in which the person has a beneficial interest—

(a) the real estate agent;

(b) a real estate salesperson employed by the agent.

Maximum penalty—200 penalty units or 3 years imprisonment.

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

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) The real estate agent must not sell the property if any of the following persons obtain a beneficial interest in an option to purchase the property—

(a) the agent;

(b) a real estate salesperson employed by the agent.

Maximum penalty—200 penalty units or 3 years imprisonment.

(5) It is a defence to a prosecution under subsection (2)(b) or (4)(b) for the real estate agent to show that the agent was not aware the salesperson obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

Beneficial interest—other than options

128.(1) This section applies to property placed by a person (**"client"**) with a real estate agent for sale, but does not apply if section 127 applies.

(2) The real estate agent commits an offence if any of the following persons obtain a beneficial interest in the property—

(a) the real estate agent;

(b) a real estate salesperson employed by the agent.

Maximum penalty—200 penalty units or 3 years imprisonment.

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

Maximum penalty—200 penalty units or 3 years imprisonment.

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

(a) the real estate agent or real estate salesperson—

(i) obtains the client's written acknowledgment that the client—

(A) is aware that the agent or salesperson is interested in obtaining a beneficial interest in the property; and

(B) consents to the agent or salesperson obtaining the interest; and

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

(b) for the sale of property—the real estate agent and the real estate salesperson do not accept commission or other reward for the sale; and

(c) the client is in substantially as good a position as the client would be if the property were sold at fair market value.

(5) It is a defence to a prosecution under subsection (2)(b) for the real estate agent to show that the agent was not aware the salesperson obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

Additional orders court may make

129.(1) If a court convicts a person of an offence against section 127(2), (3) or (4),[54] the court may—

(a) by order, declare that the option is ineffective; or

(b) if the property is sold—order the convicted person to pay to the client an amount the court decides is appropriate having regard to the profits resulting from the person obtaining the option.

(2) If a court convicts a person of an offence against section 128(2) or (3), the court may—

(a) by order—

(i) direct that the property be retransferred to the client at the convicted person's expense; and

(ii) direct the convicted person to pay to the client the amount of the commission or other reward for the sale; or

(b) if, for any reason the court considers just, the property can not be retransferred—by order, direct the convicted person to pay to the client—

(i) an amount the court decides is appropriate having regard to the profits resulting from the person obtaining a beneficial interest in the property; and

(ii) the amount of the commission or other reward for the sale.

(3) For the purposes of making an order under subsection (1)(b) or (2)(b), the court may—

(a) order that the property be valued by a person appointed by the court; and

(b) make any order necessary to allow the valuation to be undertaken.

(4) If the court makes or refuses to make an order under subsection (1), (2) or (3), an appeal against the order or refusal may be made to a District Court in the same way a penalty imposed may be appealed.

(5) The court may also make the order for costs it considers appropriate.

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54 Section 127 (Beneficial interest—options)

(6) An order may be made under this section on a conviction, whether or not a penalty is imposed.

Non-application of s 128

130. Section 128 does not apply in relation to livestock sales if the real estate agent obtains the client's written acknowledgment that the client—

(a) is aware that the real estate agent or a real estate salesperson is interested in obtaining a beneficial interest in the livestock; and

(b) consents to the real estate agent or a real estate salesperson obtaining the interest.

Division 5—Representations about finance

Definition for div 5

131. In this division—

"contract", in relation to the sale of land, includes any document that legally binds, or is intended to legally bind, a buyer in relation to the sale.

Representations about availability of finance

132.(1) A real estate agent who is a principal licensee must ensure a proposed buyer of land is given a written statement under this section if the real estate agent or a real estate salesperson employed by the agent has made a representation to the proposed buyer about finance for the purchase of the land.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) The statement must be given to the proposed buyer before the buyer signs any contract in relation to the land.

(3) The statement must include the following details—

(a) the land, clearly identified, to which the statement relates;

(b) the names and addresses of the seller of the land and the proposed buyer;

(c) whether a representation to the proposed buyer about finance has been made by the real estate agent or a real estate salesperson employed by the agent;

(d) a clear statement of the representation, and the particulars of the representation, made to the proposed buyer;

(e) the date on which the statement is given;

(f) any other thing that may be prescribed under a regulation.

(4) The statement must be signed by the real estate agent or someone authorised to sign for the agent and the proposed buyer.

(5) The real estate agent must ensure a copy of the signed statement is—

(a) kept at the real estate agent's registered office; and

(b) made available for immediate inspection by an inspector who asks to see it.

Maximum penalty for subsection (5)—200 penalty units or 2 years imprisonment.

Buyer's rights after misrepresentation about availability of finance

133.(1) A buyer of land, by written notice (**"avoidance notice"**) given to the seller of the land or the real estate agent, may avoid a contract for the sale of the land if—

(a) the real estate agent or a real estate salesperson employed by the real estate agent has made a representation about the availability of finance for the purchase of the land to the buyer; and

(b) the real estate agent does not ensure that finance is made available in accordance with the representation; and

(c) the buyer is materially affected by the real estate agent's failure.

(2) The avoidance notice must be given to the seller or real estate agent at or before the time the contract is to be completed or immediately after that time.

(3) The seller and the real estate agent are liable at law, jointly and severally, for the repayment to the buyer of all amounts paid by the buyer under the contract if the contract is avoided—

(a) by the buyer under subsection (1); or

(b) by the seller because the buyer has failed to pay in terms of the contract the purchase price or part of the purchase price because of a representation mentioned in subsection (1).

(4) A real estate agent who is liable at law under subsection (3) for the repayment to the buyer of an amount paid by the buyer under the contract must repay the amount within 14 days after becoming liable.

Maximum penalty—200 penalty units.

(5) The buyer may recover an amount mentioned in subsection (3) as a debt in a court of competent jurisdiction.

(6) Judgment recovered against either person liable under subsection (3) for an amount repayable under that subsection does not bar an action against the other person.

(7) However, if separate actions are brought—

(a) the amounts recoverable under the judgments given in the actions must not be more, taken together, than the amount repayable to the buyer; and

(b) in the later of the 2 actions, the plaintiff is not entitled to costs unless the court decides there were reasonable grounds for bringing the action.

(8) If a representation is made by the real estate agent or a real estate salesperson employed by the real estate agent without the seller's knowledge, connivance or consent, the seller may recover from the real estate agent—

(a) an amount paid under the contract and not received by the seller that the seller has repaid to the buyer; and

(b) an amount for damages suffered by the seller because of the buyer's avoidance of the contract.

(9) Subject to subsection (1), this section does not—

(a) make the contract illegal or ineffective; or

(b) empower a party to avoid the contract.

Application of ss 132 and 133

134.(1) Sections 132 and 133[55] do not apply to a representation—

(a) that the seller will transfer the land to the proposed buyer on the condition the buyer executes a mortgage in the seller's favour to secure an amount payable under a contract of sale for the land; or

(b) that the terms of the sale will be or will include a provision that the purchase price or part of the purchase price is or may be payable by instalments.

(2) An arrangement is ineffective to the extent that it purports to exclude, change or restrict the application of section 132 or 133 or this section.

Liability to punishment under s 132 or 133 additional to other liabilities at law

135.(1) Liability to punishment under section 132 or 133[56] is in addition to other liabilities at law imposed under section 133.

(2) For subsection (1), it is immaterial whether a real estate agent has not been prosecuted or, if prosecuted, has or has not been convicted for an offence against section 132 or 133.

Division 6—Lands not lawfully useable for residential purposes

Definition for div 6

136. In this division—

"vacant land" means land on which there are no structural improvements, other than fencing.

[55] Sections 132 (Representations about availability of finance) and 133 (Buyer's rights after misrepresentation about availability of finance)

[56] Section 132 (Representations about availability of finance) or 133 (Buyer's rights after misrepresentation about availability of finance)

Application of div 6

137. This division applies to a sale or proposed sale of vacant land if—

(a) the sale is by a real estate agent either as agent for another or as principal; and

(b) the land is within—

(i) the City of Brisbane area; or

(ii) a local government area or joint local government area under the *Local Government Act 1993*; and

(c) the land can not, as at the day of sale, be lawfully used for residential purposes.

Notice to be given about vacant land

138.(1) A real estate agent must give to a proposed buyer a written statement under this section.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) The real estate agent must give the statement to the proposed buyer before the buyer signs any contract in relation to the sale.

(3) The statement must include the following details—

(a) the land, clearly identified, to which the statement relates;

(b) the names and addresses of the seller of the land and the proposed buyer;

(c) a clear statement that the use of the land for residential purposes is unlawful;

(d) a clear statement that if the buyer erects on the land a dwelling house or otherwise uses the land for residential purposes contrary to law—

(i) the buyer may commit an offence; and

(ii) a named local government may be lawfully empowered to demolish the dwelling house or other residential structure; and

(e) the date on which the statement is given;

(f) any other thing that may be prescribed under a regulation.

(4) The statement must be signed by the real estate agent and the proposed buyer.

(5) The real estate agent must—

(a) keep a copy of the signed statement at the real estate agent's registered office; and

(b) make it available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units or 2 years imprisonment.

(6) An arrangement is ineffective to the extent that it purports to exclude, change or restrict the application of this section.

Buyer's rights if notice materially defective or not given

139.(1) A buyer of land, by written notice (**"avoidance notice"**) given to the seller of the land or the real estate agent, may avoid a contract for the sale of the land if—

(a) the buyer has not been given the notice under section 138; or

(b) the notice has been given to the buyer, but the notice is defective in a material way.

(2) The avoidance notice must be given to the seller or real estate agent within 6 months after the day the buyer entered into the contract.

(3) The seller and the real estate agent are liable at law, jointly and severally, for the repayment to the buyer of all amounts paid by the buyer under the contract if the contract is avoided by the buyer under subsection (1).

(4) A real estate agent who is liable at law under subsection (3) for the repayment to the buyer of an amount paid by the buyer under the contract must repay the amount within 14 days after becoming liable.

Maximum penalty for subsection (4)—200 penalty units.

(5) The buyer may recover an amount mentioned in subsection (3) as a debt in a court of competent jurisdiction.

(6) Judgment recovered against either person liable under subsection (3) for an amount repayable under that subsection does not bar an action against the other person.

(7) However, if separate actions are brought—

(a) the amounts recoverable under the judgments given in the actions must not be more, taken together, than the amount repayable to the buyer; and

(b) in the later of the 2 actions, the plaintiff is not entitled to costs unless the court decides there were reasonable grounds for bringing the action.

(8) If the buyer avoids the contract under this section after the contract is completed, the buyer must, after repayment of all amounts recoverable by the buyer under subsection (3)—

(a) sign the documents presented to the buyer necessary to reconvey title to the land to the seller or the seller's nominee; and

(b) deliver to the seller or the seller's nominee any instrument of title in the buyer's possession or under the buyer's control.

(9) The buyer is not liable for any costs associated with a reconveyance under subsection (8).

Liability to punishment under s 138 or 139 additional to other liabilities at law

140.(1) Liability to punishment under section 138 or 139[57] is in addition to other liabilities at law imposed under section 139.

(2) For subsection (1), it is immaterial whether a real estate agent has not been prosecuted or, if prosecuted, has or has not been convicted for an offence against section 138 or 139.

57 Section 138 (Notice to be given about vacant land) or 139 (Buyer's rights if notice materially defective or not given)

Division 7—Sales of certain businesses

Application of div 7

141. This division applies to the sale of a business for which a restricted letting agent's licence is required (**"restricted letting agent's business"**).

Notice to be given about sale of restricted letting agent's business

142.(1) A real estate agent who is authorised to sell a restricted letting agent's business by the seller of the business must give to a proposed buyer of the business a written statement under this section.

Maximum penalty—200 penalty units.

(2) The real estate agent must give the statement to the proposed buyer before the buyer signs any contract in relation to the sale.

(3) The statement must include the following details—

(a) the business, clearly identified, to which the statement relates;

(b) the names and addresses of the seller of the business and the proposed buyer;

(c) a clear statement that, to carry on the business, the proposed buyer must have the approval of the body corporate of the building complex in which the functions of a restricted letting agent are to be performed;

(d) a clear statement that a person who performs the functions of a restricted letting agent must—

(i) hold a restricted letting agent's licence under this Act; or

(ii) otherwise be permitted under an Act to perform the functions;

(e) the date on which the statement is given;

(f) any other thing that may be prescribed under a regulation.

(4) The statement must be signed by the real estate agent.

Maximum penalty—200 penalty units.

(5) The signed statement must be given to the proposed buyer and a copy of the signed statement must be—

(a) kept at the real estate agent's registered office; and

(b) made available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

Division 8—Code of conduct

Code of conduct

143. A regulation may prescribe a code of conduct about real estate agency practice that may include the following—

(a) setting conduct standards for real estate agents and real estate salespersons;

(b) establishing principles for fair trading;

(c) providing for a system of complaint resolution.

Complaints about conduct

144.(1) A person aggrieved by the conduct of a real estate agent or real estate salesperson may complain in writing to the chief executive of the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action about the conduct allowed under this Act.[58]

(3) The investigation may take place and action may be taken even though the person is no longer a real estate agent or real estate salesperson.

[58] Breach of a code of conduct is a ground for starting disciplinary proceedings under section 438 (Grounds for starting disciplinary proceeding).

PART 4—GENERAL

Registered office

145. A real estate agent's **"registered office"** is—

(a) for a real estate agent who is a principal licensee—

(i) the place the agent specifies in the agent's application for a real estate agent's licence as the agent's principal place of business; or

(ii) another place notified to the chief executive by the agent in the approved form as the agent's principal place of business; and

(b) for a real estate agent who is an employed licensee—

(i) the place the agent specifies in the licensee's application for a real estate agent's licence as the agent's business address; or

(ii) another place notified to the chief executive by the agent in the approved form as the agent's business address.

Real estate agent must notify chief executive of change in place of business etc.

146.(1) A real estate agent who is a principal licensee must notify the chief executive in the approved form of—

(a) any change in the agent's registered office within 14 days of the change; or

(b) the closure of any place where the agent carries on business within 14 days of the closure; or

(c) the opening of any place where the agent carries on business within 14 days of the opening.

Maximum penalty—200 penalty units.

(2) A real estate agent who is an employed licensee must notify the chief executive in the approved form of any change in the agent's registered office within 14 days of the change.

Maximum penalty—200 penalty units.

Publication of name of licensee

147.(1) A real estate agent who is a principal licensee must display at each place the agent carries on business, in the way that may be prescribed under a regulation—

(a) the agent's name; and

(b) if the agent is not the person in charge of the agent's business at the place—the name of the real estate agent who is in charge at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(2) A real estate agent who is a principal licensee must not publish, or permit to be published, in a newspaper or elsewhere an advertisement for the purpose of the agent's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

Principal licensee must keep employment register

148.(1) A real estate agent who is a principal licensee must keep a register (**"employment register"**) at each place where the agent carries on business.

Maximum penalty—200 penalty units.

(2) The real estate agent must enter in the employment register—

(a) the name, and the other details prescribed under a regulation, of each person (**"employee"**) who is employed as a real estate agent, auctioneer or real estate salesperson at the place; and

(b) for each real estate salesperson—the functions the salesperson is authorised to perform for the agent during the employee's employment by the agent.[59]

Maximum penalty—200 penalty units.

(3) The real estate agent must—

(a) enter the details about each employee and, if the employee is a real estate salesperson, the functions the salesperson is authorised to perform, immediately after the employee is employed at the place; and

(b) if there is a change in an employee's details or functions—correct the entry in the way prescribed under the regulations immediately after the change happens.

Maximum penalty—200 penalty units.

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

PART 5—OFFENCES

Acting as real estate agent

149.(1) A person must not, as an agent for someone else for reward, perform a function that may be done under the authority of a real estate agent's licence unless the person—

(a) holds a real estate agent's licence and the performance of the function is authorised under the person's licence; or

(b) is otherwise permitted under an Act to perform the function.

Maximum penalty—200 penalty units or 2 years imprisonment.

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

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

[59] The real estate agent must give the employee a statement under section 114 (Real estate agent must give salespersons "employment authority") clearly specifying the employee's functions.

(b) the act is otherwise permitted under an Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) Without limiting the ways a person may act as a real estate agent, a person **"acts"** as a real estate agent if the person—

(a) performs a function mentioned in section 109(1);[60] or

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

(i) performs a function mentioned in section 109(1); or

(ii) is willing to perform a function mentioned in section 109(1); or

(c) in any way holds out as being ready to perform a function mentioned in section 109(1).

Real estate agent must not act for more than 1 party

150.(1) A real estate agent must not accept appointment to act for more than 1 party to a transaction.

Maximum penalty—200 penalty units.

(2) If an agent accepts appointment to act for more than 1 party to a transaction, each appointment is ineffective from the beginning.

Examples of subsection (2)—

Accepting appointment to act for both seller and buyer in the 1 transaction.

Accepting appointment to act for both landlord and tenant.

(3) A real estate agent does not contravene subsection (1) and subsection (2) does not apply if the transaction is one involving a livestock sale.

Production of licence

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

Maximum penalty—100 penalty units.

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60 Section 109 (What a real estate agent's licence authorises)

Employment of ineligible persons in real estate business

152.(1) A real estate agent must not employ—

(a) as a real estate salesperson—a person the agent knows, or ought to know, is not eligible to be employed as a real estate salesperson under section 112;[61] or

(b) in any capacity in a real estate agent's business—an ineligible person.

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

(2) Subsection (1)(b) does not apply if—

(a) the chief executive approves the person's employment in a stated capacity in writing; and

(b) the person is employed in that capacity and complies with any conditions imposed by the chief executive in the approval.

(3) A person who is employed as a real estate salesperson knowing that he or she is an ineligible person commits an offence.

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

(4) A person who is employed in a capacity in a real estate agent's business knowing that he or she is not eligible to be employed in the business in that capacity commits an offence, unless—

(a) the person's employment in that capacity is approved by the chief executive; and

(b) the person complies with any conditions imposed by the chief executive in the approval.

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

(5) In this section—

"ineligible person" means a person whose name is entered in the register of ineligible persons.

61 Section 112 (Persons not eligible for employment as real estate salespersons)

Other offences about employment as real estate salespersons

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

Maximum penalty—200 penalty units.

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

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[62]—200 penalty units; or

(b) for a corporation—1 000 penalty units.

CHAPTER 5—PASTORAL HOUSES, PASTORAL HOUSE LICENSEES AND PASTORAL HOUSE SALESPERSONS

PART 1—PASTORAL HOUSES

Division 1—Pastoral house licences

What a pastoral house licence authorises

154.(1) A pastoral house licence authorises the holder of the licence (**“pastoral house”**) to perform the following functions as an agent for others for reward—

(a) the functions of a real estate agent restricted to the sale of rural

62 Section 529 (Executive officers must ensure corporation complies with Act)

land and livestock;

(b) the functions of an auctioneer restricted to—

(i) auctioning rural land, livestock and wool; and

(ii) conducting not more than 4 auctions each year of land, that is not rural land, for each place of business of the pastoral house in each year; and

(iii) auctioning plant, machinery, furniture and other items situated on rural land.

(2) A pastoral house may perform the functions in the carrying on of a business alone or with another pastoral house, real estate agent or auctioneer.

(3) However, if the pastoral house is carrying on business with a real estate agent or auctioneer, chapter 9[63] applies to a transaction entered into for the business as if the transaction had been entered into by a real estate agent or auctioneer acting alone.

What a pastoral house director's licence authorises

155.(1) A pastoral house director's licence authorises the holder of the licence (**"pastoral house director"**) to perform the functions of a real estate agent restricted to the sale of rural land and livestock for a pastoral house.

(2) The chief executive must, by condition of the licence, limit the performance of the pastoral house director's functions to a stated pastoral house.

What a pastoral house manager's licence authorises

156.(1) A pastoral house manager's licence authorises the holder of the licence (**"pastoral house manager"**) to perform the following functions for a pastoral house—

(a) to manage a pastoral house's business at a place, other than its principal place of business;

63 Chapter 9 (Accounts and funds)

(b) to perform the functions of a real estate agent restricted to the sale of rural land and livestock.

(2) The chief executive must, by condition of the licence, limit the performance of the pastoral house manager's functions to a stated pastoral house.

What a pastoral house auctioneer's licence authorises

157.(1) A pastoral house auctioneer's licence authorises the holder of the licence (**"pastoral house auctioneer"**) to perform the functions of an auctioneer for a pastoral house.

(2) The chief executive must, by condition of the licence, limit the performance of the pastoral house auctioneer's functions to a stated pastoral house.

Division 2—Pastoral house responsible for acts and omissions of salespersons

Responsibility for acts and omissions of pastoral house salespersons

158.(1) A pastoral house must take reasonable steps to ensure each pastoral house salesperson employed by the pastoral house is properly supervised, acts only within the scope of the salesperson's authority and complies with this Act.

(2) A pastoral house manager in charge of a pastoral house's business at a place must take reasonable steps to ensure each pastoral house salesperson employed at the place is properly supervised, acts only within the scope of the salesperson's authority and complies with this Act.

(3) A pastoral house or pastoral house manager who fails to meet the obligations placed on the person under subsection (1) or (2) is liable to disciplinary action under chapter 11.[64]

[64] Chapter 11 (Compliance, discipline and claims against the fund)

PART 2—PASTORAL HOUSE SALESPERSONS

Division 1—Introduction

Meaning of "pastoral house salesperson"

159.(1) A **"pastoral house salesperson"** is a person employed by a pastoral house to perform the functions of a pastoral house mentioned in section 154(1)(a).[65]

(2) To prevent any doubt, it is declared that a person employed by a pastoral house is not a pastoral house salesperson if the person's duties are only secretarial or clerical.

Division 2—Provisions about employment

Persons not eligible for employment as salespersons

160.(1) Each of the following persons is not eligible to be employed as a pastoral house salesperson—

(a) a person who has not turned 18 years;

(b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence;

(c) a person who is subject to an order of a Magistrates Court or any other court or a regulatory or disciplinary body, either within or outside Queensland, declaring the person ineligible to be employed as, or not to be entitled to perform the functions of, a pastoral house salesperson, real estate salesperson or a restricted letting agent (employee);

(d) a person whose name is entered in the register of ineligible persons as ineligible to be employed as a pastoral house salesperson, real estate salesperson or a restricted letting agent (employee);

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65 Section 154 (What a pastoral house licence authorises)

(e) a restricted letting agent;

(f) a corporation.

(2) A person must not knowingly and falsely represent to someone else that the person is eligible to be employed as a pastoral house salesperson.

Maximum penalty for subsection (2)—200 penalty units or 1 year's imprisonment.

Employment as pastoral house salespersons

161. A pastoral house must not employ someone (**"proposed employee"**) as a pastoral house salesperson unless the pastoral house has—

(a) sighted a record, not more than 1 year old, of the proposed employee's criminal history and is satisfied, after sighting the record, that the person is not ineligible under section 160(1)(b) to be employed as a pastoral house salesperson; and

(b) taken reasonable action, including action to inspect the register of ineligible persons,[66] to satisfy itself that the proposed employee is eligible to be employed as a pastoral house salesperson.

Maximum penalty—200 penalty units.

Pastoral house must give salespersons "employment authority"

162.(1) Immediately after the pastoral house salesperson starts employment, the pastoral house must give the salesperson an employment authority.

Maximum penalty—200 penalty units.

(2) In this section—

"employment authority", for a pastoral house salesperson, means a statement clearly specifying the functions of a pastoral house the salesperson is authorised by the pastoral house to perform for the pastoral house during the salesperson's employment by the pastoral house.

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[66] The chief executive is required to keep a register of ineligible persons under section 540.

Court may declare person as ineligible person

163.(1) A court may declare by order a person to be a person who is not eligible to be employed as a pastoral house salesperson.

(2) The court may make an order under subsection (1) only if it is satisfied—

(a) the person has contravened a code of conduct made under part 3, division 7;[67] or

(b) the person has been convicted of an offence against this Act and, having regard to the nature of the offence, the court considers it is appropriate to make the order; or

(c) the person has been convicted of an offence mentioned in section 160(1)(b).[68]

(3) If an order is made under subsection (1), the person's name and the other details that may be prescribed under a regulation must be entered in the register of ineligible persons.

(4) The court may make an order subject to stated conditions and may vary or revoke the order at any time.

(5) An order may be made—

(a) on conviction of a person of an offence mentioned in subsection (2)(b) or (c)—on the prosecutor's application or by the court on its own initiative; or

(b) at any time—on the application of the chief executive.

Division 3—Functions of pastoral house salespersons

Functions of pastoral house salespersons

164. A pastoral house salesperson for a pastoral house may, as an employee of the pastoral house and subject to the person's employment

67 Part 3 (Conduct provisions), division 7 (Code of conduct)

68 Section 160 (Persons not eligible for employment as salespersons)

authority under section 162,[69] perform the functions mentioned in section 154(1)(a)[70] the pastoral house is authorised to perform under this Act.

PART 3—CONDUCT PROVISIONS

Division 1—Licensee to be in charge of a licensee's business

Carrying on of business under pastoral house licence

165. A pastoral house must not carry on the business of a pastoral house with another person unless the person is—

(a) another pastoral house; or

(b) a real estate agent; or

(c) an auctioneer.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[71]—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

Licensee to be in charge of pastoral house's business at a place

166.(1) A pastoral house must ensure that—

(a) the individual in charge of the pastoral house's business at the pastoral house's registered office[72] is a pastoral house director;

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[69] Section 162 (Pastoral house must give salespersons "employment authority")

[70] Section 154 (What a pastoral house licence authorises)

[71] Section 529 (Executive officers must ensure corporation complies with Act)

[72] The **"registered office"** of a pastoral house is the pastoral house's principal place of business. See section 191 (Registered offices).

and

(b) if the pastoral house has more than 1 place of business—at each other place of business an individual who is a pastoral house director, pastoral house manager or real estate agent is in charge of the pastoral house's business at the place.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[73]—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

(2) To prevent any doubt, it is declared that a person can not be in charge of a pastoral house's business at more than 1 place.

Division 2—Appointment

Appointment of pastoral house—general

167.(1) A pastoral house who is asked by a person (**"client"**) to perform a function (**"service"**) for the client must not act for the client unless the client first appoints the pastoral house in writing.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[74]—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

(2) The appointment may be for the performance of—

(a) a particular service (**"single appointment"**); or

(b) a number of services over a period (**"continuing appointment"**).

(3) The appointment must—

(a) state the service to be performed by the pastoral house and how it

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73 Section 529 (Executive officers must ensure corporation complies with Act)

74 Section 529 (Executive officers must ensure corporation complies with Act)

is to be performed; and

(b) state—

(i) in the way prescribed under a regulation—that fees, charges and commission payable for the service are negotiable; and

(ii) if commission is payable and expressed as a percentage of sale price—the amount of commission expressed in dollars based on the listed sale price or, if the sale is to be by way of auction, the reserve price; and

(c) state—

(i) the fees, charges and commission payable for the service; and

(ii) the expenses, including advertising and travelling expenses, the pastoral house is authorised to incur in connection with—

(A) for a single appointment—the performance of the service; or

(B) for a continuing appointment—the performance of each service or category of service; and

(iii) any condition, limitation or restriction on the performance of the service; and

(d) state when the fees, charges and commission for the service become payable; and

(e) if a service to be performed is the sale of property and commission is payable in relation to the service and expressed as a percentage—state that the commission is worked out only on the actual sale price of the property; and

(f) state any other information that may be prescribed under a regulation.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

(4) A continuing appointment must state—

(a) the period of the appointment; and

(b) the appointment may be revoked at any time by signed writing given to the other party.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

(5) Subsection (3)(b)(ii) does not apply to a continuing appointment.

(6) The appointment must be signed by the client and the pastoral house or someone authorised or apparently authorised to sign for the pastoral house.

(7) The pastoral house must give a copy of the signed appointment to the client.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

(8) If an appointment under this section authorises a sale by auction, an appointment under section 207[75] is not required.

(9) This section does not apply if the service to be performed is the sale of livestock.

Appointment of pastoral house—sole and exclusive agencies

168.(1) If the appointment is for a sole or exclusive agency for the sale of land, before the appointment is signed the pastoral house must give the client a notice in the approved form stating—

(a) the proposed term of the appointment; and

(b) the term is negotiable up to a maximum term of 90 days; and

[75] Section 207 (Appointment of auctioneer—general)

(c) whether the appointment is under a sole agency or an exclusive agency; and

(d) the difference between sole agency and exclusive agency;[76] and

(e) the consequences for the client if the property is sold by someone other than the pastoral house during the term of the sole or exclusive agency.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[77]—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

(2) The appointment may include provision that, at the end of the term of a sole or exclusive agency, the appointment of the pastoral house continues under an open listing[78] that may be ended at any time by either party.

(3) The notice is not required to state that the term of appointment is negotiable up to a maximum term of 90 days if the notice relates to property prescribed under a regulation for this subsection.

(4) The pastoral house's requirement to give the notice under this section is in addition to the pastoral house's requirement to obtain an appointment under section 167.

Pastoral house may be reappointed

169.(1) A pastoral house may be reappointed for a sole or exclusive agency for 1 or more further terms of not more than 90 days.

(2) The reappointment must not be made until 14 days or a shorter period before the term of the sole or exclusive agency ends.

Maximum penalty for subsection (2)—

(a) for an individual guilty under chapter 2 of the Criminal Code of

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76 For the difference between sole agency and exclusive agency, see section 19.

77 Section 529 (Executive officers must ensure corporation complies with Act)

78 See section 18 (Meaning of "open listing")

an offence or for section 529[79]—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

Avoidance of appointments

170.(1) The appointment of a pastoral house is ineffective from the beginning if—

(a) the notice mentioned in section 168[80] is not given before the appointment is signed; or

(b) the term of the appointment is more than 90 days.

(2) Subsection (1)(b) does not apply to an appointment for property prescribed for section 168(3).

(3) The reappointment of a pastoral house for a further term of sole or exclusive agency is ineffective if it is made contrary to section 169(2).

Division 3—Recovery of commission or reward

Restriction on commission payable as a percentage

171.(1) This section applies to a pastoral house that performs a service of selling property for someone and claims commission worked out as a percentage for the service.

(2) The pastoral house must not claim commission worked out as a percentage of an amount more than the actual sale price of the property.

Maximum penalty for subsection (2)—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[81]—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

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79 Section 529 (Executive officers must ensure corporation complies with Act)

80 Section 168 (Appointment of pastoral house—sole and exclusive agencies)

81 Section 529 (Executive officers must ensure corporation complies with Act)

Restriction on remedy for commission or reward

172.(1) A person must not sue for, or recover or retain, a commission, reward or expense for the performance of a function as a pastoral house unless—

(a) at the time the function was performed—

(i) the person held a pastoral house licence; and

(ii) the person was authorised under the person's licence to perform the function; and

(b) the person has been properly appointed under division 2 by the person to be charged with the commission, reward or expense.

Maximum penalty—200 penalty units.

(2) A person must not sue for, or recover or retain, a commission or reward for the performance of a function as a pastoral house that is more than—

(a) the amount of the commission or reward stated in the appointment given under section 167(3);[82] or

(b) if commission rates for the performance of the function have been prescribed under a regulation—the lesser of the amount stated in the appointment for the performance of the function and the commission allowed under the regulation for the performance of the function.

Maximum penalty—200 penalty units.

(3) A person must not sue for, or recover or retain, expenses for the performance of a function as a pastoral house that is more than the lesser of the following amounts—

(a) the amount of the expenses stated in the appointment given under section 167(3) and actually expended;

(b) if the amount of expenses that may be incurred in relation to the performance of the function is limited under a regulation—the amount allowed under the regulation.

Maximum penalty—200 penalty units.

82 Section 167 (Appointment of pastoral house—general)

Excess commission etc. to be repaid

173.(1) This section applies if—

(a) a person is convicted of an offence against section 171(2) or 172;[83] and

(b) the court before whom the person is convicted is satisfied on the balance of probabilities the person, in connection with the offence, has recovered or retained from someone (**"client"**) for whom the person performed a function 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 order may be filed in a court having jurisdiction for the recovery of a debt of an equal amount and enforced as a judgment of that court.

Division 4—Interests in property

Definition for div 4

174. In this division—

"obtain" includes being in any way concerned in obtaining.

Beneficial interest—options

175.(1) This section applies to property placed by a person (**"client"**) with a pastoral house for sale.

(2) The pastoral house commits an offence if any of the following persons obtain from the client an option to purchase the property in which the person has a beneficial interest—

(a) the pastoral house;

83 Section 171 (Restriction on commission payable as a percentage) or 172 (Restriction on remedy for commission or reward)

(b) a pastoral house officer of the pastoral house.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[84]—200 penalty units or 3 years imprisonment; or

(b) for a pastoral house—1 000 penalty units.

(3) A pastoral house officer of the pastoral house commits an offence if the officer obtains from the client an option to purchase the property in which the officer has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) A pastoral house must not sell the property if any of the following persons obtain a beneficial interest in an option to purchase the property—

(a) the pastoral house;

(b) a pastoral house officer of the pastoral house.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529—200 penalty units or 3 years imprisonment; or

(b) for a pastoral house—1 000 penalty units.

(5) It is a defence to a prosecution under subsection (2)(b) or (4)(b) for the pastoral house to show that the pastoral house was not aware the pastoral house officer obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

Beneficial interest—other than options

176.(1) This section applies to property placed by a person (**“client”**) with a pastoral house for sale, but does apply if section 175 applies.

(2) The pastoral house commits an offence if any of the following persons obtain a beneficial interest in the property—

84 Section 529 (Executive officers must ensure corporation complies with Act)

(a) the pastoral house;

(b) a pastoral house officer of the pastoral house.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[85]—200 penalty units or 3 years imprisonment; or

(b) for a pastoral house—1 000 penalty units.

(3) A pastoral house officer of the pastoral house commits an offence if the officer obtains a beneficial interest in the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) An offence is not committed against subsection (2) or (3) if—

(a) the pastoral house or pastoral house officer—

(i) obtains the client's written acknowledgment that the client—

(A) is aware that the pastoral house or pastoral house officer is interested in obtaining a beneficial interest in the property; and

(B) consents to the pastoral house or pastoral house officer obtaining the interest; and

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

(b) for the sale of property—the pastoral house or pastoral house officer do not accept commission or other reward for the sale; and

(c) the client is in substantially as good a position as if the property were sold at fair market value.

(5) It is a defence to a prosecution under subsection (2)(b) for the pastoral house to show that the pastoral house was not aware the pastoral house officer obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

85 Section 529 (Executive officers must ensure corporation complies with Act)

Additional orders court may make

177.(1) If a court convicts a person of an offence against section 175(2), (3) or (4),[86] the court may—

(a) by order, declare that the option is ineffective; or

(b) if the property is sold—order the convicted person to pay to the client an amount the court decides is appropriate having regard to the profits resulting from the person obtaining the option.

(2) If a court convicts a person of an offence against section 176(2) or (3), the court may—

(a) by order—

(i) direct that the property be retransferred to the client at the convicted person's expense; and

(ii) direct the convicted person to pay to the client the amount of the commission or other reward for the sale; or

(b) if, for any reason the court considers just, the property can not be retransferred—by order, direct the convicted person to pay to the client—

(i) an amount the court decides is appropriate having regard to the profits resulting from the person obtaining the beneficial interest in the property; and

(ii) the amount of the commission or other reward for the sale.

(3) For the purposes of making an order under subsection (1)(b) or (2)(b), the court may—

(a) order that the property be valued by a person appointed by the court; and

(b) make any order necessary to allow the valuation to be undertaken.

(4) If the court makes or refuses to make an order under subsection (1), (2) or (3), an appeal against the order or refusal may be made to a District Court in the same way a penalty imposed may be appealed.

(5) The court may also make the order for costs it considers appropriate.

[86] Section 175 (Beneficial interest—options)

(6) An order may be made under this section on the conviction, whether or not a penalty is imposed.

Non-application of s 176

178. Section 176 does not apply in relation to livestock sales if the pastoral house obtains the client's written acknowledgment that the client—

(a) is aware that the pastoral house or pastoral house officer is interested in obtaining a beneficial interest in the livestock; and

(b) consents to the pastoral house, pastoral house officer or associate of the officer obtaining the interest.

Division 5—Representations about finance

Definition for div 5

179. In this division—

"contract", for the sale of land to which this division applies, includes any document that legally binds, or is intended to legally bind, a buyer for the sale.

Representations about availability of finance

180.(1) A pastoral house must ensure a proposed buyer of land is given a written statement under this section if the pastoral house or a pastoral house officer of the pastoral house has made a representation to the proposed buyer about finance for the purchase of the land.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[87]—200 penalty units or 2 years imprisonment; or

(b) for a pastoral house—1 000 penalty units.

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87 Section 529 (Executive officers must ensure corporation complies with Act)

(2) The statement must be given to the proposed buyer before the buyer signs any contract in relation to the land.

(3) The statement must include the following details—

(a) the land, clearly identified, to which the statement relates;

(b) the names and addresses of the seller of the land and the proposed buyer;

(c) whether a representation to the proposed buyer about finance has been made by the pastoral house or a pastoral house officer of the pastoral house;

(d) a clear statement of the representation, and the particulars of the representation, made to the proposed buyer;

(e) the date on which the statement is given;

(f) any other thing that may be prescribed under a regulation.

(4) The statement must be signed by someone authorised by the pastoral house to sign the statement and the proposed buyer.

(5) The pastoral house must ensure a copy of the signed statement is—

(a) kept at the place of business of the pastoral house where dealings with the proposed buyer were conducted; and

(b) made available for immediate inspection by an inspector who asks to see it.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529—200 penalty units or 2 years imprisonment; or

(b) for a pastoral house—1 000 penalty units.

Buyer's rights after misrepresentation about availability of finance

181.(1) A buyer of land, by written notice (**"avoidance notice"**) given to the seller of the land or the pastoral house, may avoid a contract for the sale of the land if—

(a) the pastoral house or a pastoral house officer of the pastoral house has made a representation about the availability of finance for the purchase of the land to the buyer; and

(b) the pastoral house does not ensure that finance is made available in accordance with the representation; and

(c) the buyer is materially affected by the pastoral house's failure.

(2) The avoidance notice must be given to the seller or pastoral house at or before the time the contract is to be completed or immediately after that time.

(3) The seller and the pastoral house are liable at law, jointly and severally, for the repayment to the buyer of all amounts paid by the buyer under the contract if the contract is avoided—

(a) by the buyer under subsection (1); or

(b) by the seller because the buyer has failed to pay in terms of the contract the purchase price or part of the purchase price because of a representation mentioned in subsection (1).

(4) A pastoral house that is liable at law under subsection (3) for the repayment to the buyer of an amount paid by the buyer under the contract must repay the amount within 14 days after becoming liable.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[88]—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

(5) The buyer may recover an amount mentioned in subsection (3) as a debt in a court of competent jurisdiction.

(6) Judgment recovered against either person liable under subsection (3) for an amount repayable under that subsection does not bar an action against the other person.

(7) However, if separate actions are brought—

(a) the amounts recoverable under the judgments given in the actions must not be more, taken together, than the amount repayable to the buyer; and

88 Section 529 (Executive officers must ensure corporation complies with Act)

(b) in the later of the 2 actions, the plaintiff is not entitled to costs unless the court decides there were reasonable grounds for bringing the action.

(8) If a representation is made by the pastoral house without the seller's knowledge, connivance or consent, the seller may recover from the pastoral house—

(a) an amount paid under the contract and not received by the seller that the seller has repaid to the buyer; and

(b) an amount for damages suffered by the seller because of the buyer's avoidance of the contract.

(9) Subject to subsection (1), this section does not—

(a) make the contract illegal or ineffective; or

(b) empower a party to avoid the contract.

Application of ss 180 and 181

182.(1) Sections 180 and 181[89] do not apply to a representation—

(a) that the seller will transfer the land to the proposed buyer on the condition the buyer executes a mortgage in the seller's favour to secure an amount payable under a contract of sale for the land; or

(b) that the terms of the sale will be or will include a provision that the purchase price or part of the purchase price is or may be payable by instalments.

(2) An arrangement is ineffective to the extent that it purports to exclude, change or restrict the application of section 180 or 181 or this section.

Liability to punishment under s 180 or 181 additional to other liabilities at law

183.(1) Liability to punishment under section 180 or 181 is in addition to other liabilities at law imposed under section 181.

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89 Sections 180 (Representations about availability of finance) and 181 (Buyer's rights after misrepresentation about availability of finance)

(2) For subsection (1), it is immaterial whether a pastoral house has not been prosecuted or, if prosecuted, has or has not been convicted for an offence against section 180 or 181.

Division 6—Lands not lawfully useable for residential purposes

Definition for div 6

184. In this division—

"vacant land" means land on which there are no structural improvements, other than fencing.

Application of div 6

185. This division applies to a sale or proposed sale of vacant land if—

(a) the sale is by a pastoral house either as agent for another or as principal; and

(b) the land is within—

(i) the City of Brisbane area; or

(ii) a local government area or joint local government area under the *Local Government Act 1993*; and

(c) the land can not, as at the day of sale, be lawfully used for residential purposes.

Notice to be given about vacant land

186.(1) A pastoral house must give to a proposed buyer a written statement under this section.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[90]—200 penalty units or 2 years imprisonment; or

[90] Section 529 (Executive officers must ensure corporation complies with Act)

(b) for a pastoral house—1 000 penalty units.

(2) The pastoral house must give the statement to the proposed buyer before the buyer signs any contract for the sale.

(3) The statement must include the following details—

(a) the land, clearly identified, to which the statement relates;

(b) the names and addresses of the seller of the land and the proposed buyer;

(c) a clear statement that the use of the land for residential purposes is unlawful;

(d) a clear statement that if the buyer erects on the land a dwelling house or otherwise uses the land for residential purposes contrary to law—

(i) the buyer may commit an offence; and

(ii) a named local government may be lawfully empowered to demolish the dwelling house or other residential structure;

(e) the date on which the statement is given;

(f) any other thing that may be prescribed under a regulation.

(4) The statement must be signed by someone authorised by the pastoral house to sign the statement and the proposed buyer.

(5) The pastoral house must—

(a) keep a copy of the signed statement at the place of business of the pastoral house where dealings with the proposed buyer were conducted; and

(b) make it available for immediate inspection by an inspector who asks to see it.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529—200 penalty units or 2 years imprisonment; or

(b) for a pastoral house—1 000 penalty units.

(6) An arrangement is ineffective to the extent that it purports to exclude, change or restrict the application of this section.

Buyer's rights if notice not given or materially defective

187.(1) A buyer of land, by written notice (**"avoidance notice"**) given to the seller or pastoral house, may avoid a contract for the sale of the land if—

(a) the buyer has not been given the notice under section 186; or

(b) the notice has been given to the buyer, but the notice is defective in a material way.

(2) The avoidance notice must be given to the seller or pastoral house within 6 months after the day the buyer entered into the contract.

(3) The seller and the pastoral house are liable at law, jointly and severally, for the repayment to the buyer of all amounts paid by the buyer under the contract if the contract is avoided by the buyer under subsection (1).

(4) A pastoral house that is liable at law under subsection (3) for the repayment to the buyer of an amount paid by the buyer under the contract must repay the amount within 14 days after becoming liable.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[91]—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

(5) The buyer may recover an amount mentioned in subsection (3) as a debt in a court of competent jurisdiction.

(6) Judgment recovered against either person liable under subsection (3) for an amount repayable under that subsection does not bar an action against the other person.

(7) However, if separate actions are brought—

(a) the amounts recoverable under the judgments given in the actions must not be more, taken together, than the amount repayable to

91 Section 529 (Executive officers must ensure corporation complies with Act)

the buyer; and

(b) in the later of the 2 actions, the plaintiff is not entitled to costs unless the court decides there were reasonable grounds for bringing the action.

(8) If the buyer avoids the contract under this section after the contract is completed, the buyer must, after repayment of all amounts recoverable by the buyer under subsection (3)—

(a) sign the documents presented to the buyer necessary to reconvey title to the land to the seller or the seller's nominee; and

(b) deliver to the seller or the seller's nominee any instrument of title in the buyer's possession or under the buyer's control.

(9) The buyer is not liable for any costs associated with a reconveyance under subsection (8).

Liability to punishment under s 186 or 187 additional to other liabilities at law

188.(1) Liability to punishment under section 186 or 187[92] is in addition to other liabilities at law imposed under section 187.

(2) For subsection (1), it is immaterial whether a pastoral house has not been prosecuted or, if prosecuted, has or has not been convicted for an offence against section 186 or 187.

Division 7—Code of conduct

Code of conduct

189. A regulation may prescribe a code of conduct for pastoral houses that may include the following—

(a) setting conduct standards for pastoral houses and pastoral house officers;

92 Section 186 (Notice to be given about vacant land) or 187 (Buyer's rights if notice not given or materially defective)

(b) establishing principles for fair trading;

(c) providing for a system of complaint resolution.

Complaints about conduct

190.(1) A person aggrieved by the conduct of a pastoral house or pastoral house officer may complain in writing to the chief executive of the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action in relation to the conduct allowed under this Act.[93]

(3) The investigation may take place and action may be taken against a person who was a pastoral house officer even though the person is no longer a pastoral house officer.

PART 4—GENERAL

Registered offices

191.(1) A pastoral house's **"registered office"** is—

(a) the place the pastoral house specifies in its application for a pastoral house licence as its principal place of business; or

(b) another place notified to the chief executive by the pastoral house in the approved form as its principal place of business.

(2) A pastoral house director's **"registered office"** is—

(a) the place the pastoral house director specifies in the director's application for a pastoral house director's licence as the director's business address; or

(b) another place notified to the chief executive by the pastoral house

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93 Breach of a code of conduct is a ground for starting disciplinary proceedings under section 438 (Grounds for starting disciplinary proceeding).

director in the approved form as the director's business address.

(3) A pastoral house manager's **"registered office"** is—

(a) the place the pastoral house manager specifies in the manager's application for a pastoral house manager's licence as the manager's business address; or

(b) another place notified to the chief executive by the pastoral house manager in the approved form as the manager's business address.

(4) A pastoral house auctioneer's **"registered office"** is—

(a) the place the pastoral house auctioneer specifies in the auctioneer's application for a pastoral house auctioneer's licence as the auctioneer's business address; or

(b) another place notified to the chief executive by the pastoral house auctioneer in the approved form as the auctioneer's business address.

Pastoral house etc. must notify chief executive of certain changes

192.(1) A pastoral house must notify the chief executive in the approved form of—

(a) any change in the pastoral house's registered office within 14 days of the change; or

(b) the closure of any place where the pastoral house carries on business within 14 days of the closure; or

(c) the opening of any place where the pastoral house carries on business within 14 days of the opening.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[94]—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

(2) A pastoral house director, manager or auctioneer must notify the

94 Section 529 (Executive officers must ensure corporation complies with Act)

chief executive in the approved form of any change in the director's, manager's or auctioneer's registered office within 14 days of the change.

Maximum penalty—200 penalty units.

(3) A pastoral house must notify the chief executive in the approved form of the name of a pastoral house director who stops being a director of the pastoral house.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

(4) A pastoral house must notify the chief executive in the approved form of the name of a pastoral house manager or auctioneer who stops being an employee of the pastoral house.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

Publication of name of licensee

193.(1) A pastoral house must display at each place the pastoral house carries on business, in the way that may be prescribed under a regulation—

(a) the pastoral house's name; and

(b) the name of the person in charge of the pastoral house's business at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[95]—100 penalty units; or

(b) for a pastoral house—500 penalty units.

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95 Section 529 (Executive officers must ensure corporation complies with Act)

(2) A pastoral house must not publish in a newspaper or elsewhere an advertisement for the purpose of the pastoral house's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529—100 penalty units; or

(b) for a pastoral house—500 penalty units.

Pastoral house to keep employment register

194.(1) A pastoral house must keep a register (**"employment register"**) at each place where the pastoral house carries on business.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[96]—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

(2) The pastoral house must enter in the employment register—

(a) the name, and the other details that may be prescribed under a regulation, of each person (**"employee"**) who is employed as a pastoral house manager, pastoral house auctioneer or pastoral house salesperson at the place; and

(b) for each pastoral house salesperson—the functions the salesperson is authorised to perform for the pastoral house during the salesperson's employment by the pastoral house.[97]

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529—200 penalty units; or

96 Section 529 (Executive officers must ensure corporation complies with Act)

97 The pastoral house must give the salesperson a statement under section 162 (Pastoral house must give salespersons "employment authority") clearly specifying the salesperson's functions.

(b) for a pastoral house—1 000 penalty units.

(3) The pastoral house must—

(a) enter the details about each employee and, if the employee is a pastoral house salesperson, the functions the salesperson is authorised to perform, immediately after the person is employed at the place; and

(b) if there is a change in an employee's details or functions—correct the entry in the way prescribed under the regulations immediately after the change happens.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

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

PART 5—OFFENCES

Acting as pastoral house

195.(1) A person must not, as an agent for someone else for reward, perform a function that may be done under the authority of a pastoral house licence unless the person—

(a) holds a pastoral house licence and the performance of the function is authorised under the person's licence; or

(b) is otherwise permitted under an Act to perform the function.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A person must not act as a pastoral house unless—

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

(b) the act is otherwise permitted under an Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) Without limiting the ways a person may act as a pastoral house, a person **“acts”** as a pastoral house if the person—

(a) performs a function mentioned in section 154(1);[98] or

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

(i) performs a function mentioned in section 154(1); or

(ii) is willing to perform a function mentioned in section 154(1); or

(c) in any way holds out as being ready to perform a function mentioned in section 154(1).

Acting as pastoral house director

196. A person must not, as an agent for someone else for reward, perform a function that may be done under the authority of a pastoral house director’s licence unless the person—

(a) holds a pastoral house director’s licence and the performance of the function is authorised under the person’s licence; or

(b) is otherwise permitted under an Act to perform the function.

Maximum penalty—200 penalty units or 2 years imprisonment.

Acting as pastoral house manager

197. A person must not, as an agent for someone else for reward, perform a function that may be done under the authority of a pastoral house manager’s licence unless the person—

(a) holds a pastoral house manager’s licence and the performance of the function is authorised under the person’s licence; or

(b) is otherwise permitted under an Act to perform the function.

Maximum penalty—200 penalty units or 2 years imprisonment.

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98 Section 154 (What a pastoral house licence authorises)

Acting as pastoral house auctioneer

198. A person must not perform a function that may be done under the authority of a pastoral house auctioneer's licence unless the person—

(a) holds a pastoral house auctioneer's licence and the performance of the function is authorised under the person's licence; or

(b) is otherwise permitted under an Act to perform the function.

Maximum penalty—200 penalty units or 2 years imprisonment.

Pastoral house must not act for more than 1 party

199.(1) A pastoral house must not accept appointment to act for more than 1 party to a transaction.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[99]—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

(2) If a pastoral house accepts appointment to act for more than 1 party to a transaction, each appointment is ineffective from the beginning.

Examples of subsection (2)—

Accepting appointment to act for both seller and buyer in the 1 transaction.

Accepting appointment to act for both livestock producer and buyer.

(3) A pastoral house does not contravene subsection (1) and subsection (2) does not apply if the transaction is one involving a livestock sale.

Production of licence

200.(1) A pastoral house officer must, if asked by a person with whom the officer is dealing, produce the officer's licence for inspection by the person.

Maximum penalty—100 penalty units.

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99 Section 529 (Executive officers must ensure corporation complies with Act)

(2) In this section—

“pastoral house officer” does not include a pastoral salesperson.

Employment of ineligible persons in pastoral house business

201.(1) A pastoral house must not employ—

(a) as a pastoral house salesperson—a person the pastoral house knows, or ought to know, is not eligible to be employed as a pastoral house salesperson under section 160;[100] or

(b) in any capacity in a pastoral house business—an ineligible person.

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

(2) Subsection (1)(b) does not apply if—

(a) the chief executive approves the person’s employment in a stated capacity in writing; and

(b) the person is employed in that capacity and complies with any conditions imposed by the chief executive in the approval.

(3) A person who is employed as a pastoral house salesperson knowing that he or she is an ineligible person commits an offence.

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

(4) A person who is employed in a capacity in a pastoral house business knowing that he or she is not eligible to be employed in the business in that capacity commits an offence, unless—

(a) the person’s employment in that capacity is approved by the chief executive; and

(b) the person complies with any conditions imposed by the chief executive in the approval.

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

(5) In this section—

“ineligible person” means a person whose name is entered in the register of ineligible persons.

[100] Section 160 (Persons not eligible for employment as salespersons)

Other offences about employment as pastoral house salespersons

202. A pastoral house must not employ an executive officer of the pastoral house as a pastoral house salesperson for the pastoral house.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[101]—200 penalty units; or

(b) for a pastoral house—1 000 penalty units.

CHAPTER 6—AUCTIONEERS AND TRAINEE AUCTIONEERS

PART 1—AUCTIONEERS

What an auctioneer's licence authorises

203.(1) An auctioneer's licence authorises the holder of the licence (**"auctioneer"**) to perform the function of selling or attempting to sell or offering for sale or resale any property by way of auction.

(2) An auctioneer's licence also authorises the auctioneer to sell the property by any means during the auction period.

(3) An auctioneer may perform the function—

(a) in the carrying on of a business, either alone or with others; or

(b) as an employee of—

(i) an auctioneer; or

(ii) a real estate agent; or

(iii) a pastoral house; or

(iv) a motor dealer.

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[101] Section 529 (Executive officers must ensure corporation complies with Act)

(4) In this section—

"auction period" means the period starting on the day 1 month before the day set for the auction and ending 1 month after the day of the auction.

PART 2—TRAINEE AUCTIONEERS

What a trainee auctioneer's licence authorises

204.(1) A trainee auctioneer's licence authorises the holder of the licence (**"trainee auctioneer"**) to perform the function of an auctioneer under the direct supervision and instruction of an auctioneer.

(2) The chief executive must, by condition of the licence, limit the performance of the function by the trainee auctioneer to the direct supervision and instruction of the auctioneer or auctioneers specified on the licence.

PART 3—CONDUCT PROVISIONS

Division 1—Licensee to be in charge of a licensee's business

Carrying on of business under auctioneer's licence

205. An individual who carries on the business of a auctioneer with others is not required to hold an auctioneer's licence if—

(a) at least 1 of the persons with whom the individual carries on business is an auctioneer; and

(b) the individual does not perform the function of an auctioneer; and

(c) the individual is a suitable person to hold a licence.

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

206.(1) An auctioneer who is an individual and a principal licensee must—

(a) be in charge of the auctioneer's business at the auctioneer's registered office;[102] and

(b) if the auctioneer has more than 1 place of business—ensure that at each other place of business an individual who is an auctioneer is in charge of the auctioneer's business at the place.

Maximum penalty—200 penalty units.

(2) An auctioneer that is a corporation and a principal licensee (**"corporate auctioneer"**) must ensure that—

(a) the individual in charge of the corporate auctioneer's business at its registered office is an auctioneer; and

(b) if the corporate auctioneer has more than 1 place of business—at each other place of business an individual who is an auctioneer is in charge of the corporate auctioneer's business at the place.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[103]—200 penalty units; or

(b) for a corporation—1 000 penalty units.

(3) To remove any doubt, it is declared that an auctioneer can not be in charge of an auctioneer's business at more than 1 place of business.

Division 2—Appointment

Appointment of auctioneer—general

207.(1) An auctioneer who is asked by a person (**"client"**) to perform a function (**"service"**) for the client must not act for the client unless the client first appoints the auctioneer in writing.

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102 See section 249 (Registered office).

103 Section 529 (Executive officers must ensure corporation complies with Act)

Maximum penalty—200 penalty units.

(2) The appointment may be for the performance of—

(a) a particular service (**“single appointment”**); or

(b) a number of services over a period (**“continuing appointment”**).

(3) The appointment must—

(a) state the service to be performed by the auctioneer and how it is to be performed; and

(b) state the day set for the auction; and

(c) state—

(i) in the way prescribed under a regulation—that fees, charges and commission payable for the service are negotiable; and

(ii) if commission is payable and expressed as a percentage of sale price—the amount of commission expressed in dollars based on the reserve sale price; and

(d) state—

(i) the fees, charges and commission payable for the service; and

(ii) the expenses, including advertising and travelling expenses, the auctioneer is authorised to incur in connection with—

(A) for a single appointment—the performance of the service; or

(B) for a continuing appointment—the performance of each service or category of service; and

(iii) any condition, limitation or restriction on the performance of the service; and

(e) state when the fees, charges and commission for the service become payable; and

(f) if the service to be provided is the sale of property and commission is payable for the service and expressed as a percentage—state that the commission is worked out only on the actual sale price of the property; and

(g) state any other information that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(4) A continuing appointment must state—

(a) the date the appointment ends; and

(b) the appointment may be revoked at any time by signed writing given to the other party.

Maximum penalty—200 penalty units.

(5) Subsection (3)(c)(ii) does not apply to a continuing appointment.

(6) The appointment must be signed by the client and the auctioneer or someone authorised or apparently authorised to sign for the auctioneer.

(7) The auctioneer must give a copy of the signed appointment to the client.

Maximum penalty for subsection (7)—200 penalty units.

Appointment of auctioneer—sole and exclusive agencies

208.(1) If the appointment is for a sole or exclusive agency, before the appointment is signed the auctioneer must give the client a notice in the approved form stating the following—

(a) the proposed term of the appointment;

(b) the term is negotiable up to a maximum term of 90 days;

(c) whether the appointment is under a sole agency or an exclusive agency;

(d) the difference between sole agency and exclusive agency;[104]

(e) the consequences for the client if the property is sold by someone other than the auctioneer during the term of the sole or exclusive agency.

Maximum penalty—200 penalty units.

(2) The notice is not required to state that the term of appointment is

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[104] For the difference between sole and exclusive agency, see section 19.

negotiable up to a maximum term of 90 days if the notice relates to property prescribed under a regulation for this subsection.

(3) The auctioneer's requirement to give the notice under this section is in addition to the auctioneer's requirement to obtain an appointment under section 207.

Auctioneers may be reappointed

209.(1) An auctioneer may be reappointed for a sole or exclusive agency for 1 or more further terms of not more than 90 days.

(2) The reappointment must not be made until 14 days or a shorter period before the initial term of the sole or exclusive agency ends.

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

Avoidance of appointments

210.(1) The appointment of an auctioneer is ineffective from the beginning if—

(a) the notice mentioned in section 208[105] is not given before the appointment is signed; or

(b) the term of an appointment for a sole or exclusive agency is more than 90 days.

(2) Subsection (1)(b) does not apply to an appointment for property prescribed for section 208(2).

(3) The reappointment of an auctioneer for a further term of sole or exclusive agency is ineffective if it is made contrary to section 209(2).

Division 3—Chattel auctions

Buyer's premium

211.(1) This section applies to an auction of chattels.

[105] Section 208 (Appointment of auctioneer—sole and exclusive agencies)

(2) An auctioneer must not charge the buyer of a chattel a buyer's premium unless the auctioneer—

(a) before the auction—obtains the written consent of the owner of the chattel; and

(b) discloses, in the way prescribed under a regulation, that a buyer's premium is payable on the purchase of the chattel.

Maximum penalty—200 penalty units.

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

(4) In this section—

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

"chattel" does not include a leasehold interest in land.

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

Division 4—Recovery of commission or reward

Restriction on commission payable as a percentage

212.(1) This section applies to an auctioneer who performs a service of selling property for someone and claims commission worked out as a percentage for the service.

(2) The auctioneer must not claim commission worked out as a percentage of an amount more than the actual sale price of the property.

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

Restriction on remedy for commission or reward

213.(1) A person must not sue for, or recover or retain, a commission, reward or expense for the performance of a function as an auctioneer unless—

(a) at the time the function was performed—

(i) the person held an auctioneer's licence; and

(ii) the person was authorised under the person's licence to perform the function; and

(b) the person has been properly appointed under division 2 by the person to be charged with the commission, reward or expense.

Maximum penalty—200 penalty units.

(2) A person must not sue for, or recover or retain, a commission or reward for the performance of a function as an auctioneer that is more than—

(a) the amount of the commission or reward stated in the appointment given under section 207(3);[106] or

(b) if commission rates for the performance of the function have been prescribed under a regulation—the lesser of the amount stated in the appointment for the performance of the function and the commission allowed under the regulation for the performance of the function.

Maximum penalty—200 penalty units.

(3) A person must not sue for, or recover or retain, expenses for the performance of a function as an auctioneer that is more than the lesser of the following amounts—

(a) the amount of the expenses stated in the appointment given under section 207(3) and actually expended;

(b) if the amount of expenses that may be incurred in relation to the performance of the function is limited under a regulation—the amount allowed under the regulation.

Maximum penalty—200 penalty units.

Excess commission etc. to be repaid

214.(1) This section applies if—

(a) a person is convicted of an offence against section 212(2)

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[106] Section 207 (Appointment of auctioneer—general)

or 213;[107] and

(b) the court before whom the person is convicted is satisfied on the balance of probabilities the person, in connection with the offence, has recovered or retained from someone (**"client"**) for whom the person performed a function 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 order may be filed in a court having jurisdiction for the recovery of a debt of an equal amount and enforced as a judgment of that court.

Division 5—Interests in property

Definition for div 4

215. In this division—

"obtain" includes being in any way concerned in obtaining.

Beneficial interest—options

216.(1) This section applies to property placed by a person (**"client"**) with an auctioneer for sale.

(2) The auctioneer commits an offence if any of the following persons obtain from the client an option to purchase the property in which the person has a beneficial interest—

(a) the auctioneer;

(b) a trainee auctioneer under the supervision or instruction of the auctioneer.

Maximum penalty—200 penalty units or 3 years imprisonment.

[107] Section 212 (Restriction on commission payable as a percentage) or 213 (Restriction on remedy for commission or reward)

(3) A trainee auctioneer under the supervision or instruction of the auctioneer commits an offence if the trainee obtains from the client an option to purchase the property in which the trainee has a beneficial interest.

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) An auctioneer must not sell property if any of the following persons obtain a beneficial interest in an option to purchase the property—

(a) the auctioneer;

(b) a trainee auctioneer authorised to perform the function of an auctioneer under the supervision or instruction of the auctioneer.

Maximum penalty—200 penalty units or 3 years imprisonment.

(5) It is a defence to a prosecution under subsection (2)(b) or (4)(b) for the auctioneer to show that the auctioneer was not aware the trainee auctioneer obtained the beneficial interest and exercised proper diligence to prevent the contravention.

Beneficial interest—other than options

217.(1) This section applies to property placed by a person (**“client”**) with an auctioneer for sale, but does not apply if section 216 applies.

(2) The auctioneer commits an offence if any of the following persons obtain a beneficial interest in the property—

(a) the auctioneer;

(b) a trainee auctioneer under the supervision or instruction of the auctioneer.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) A trainee auctioneer under the supervision or instruction of the auctioneer commits an offence if the trainee obtains a beneficial interest in the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

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

(a) the auctioneer or trainee auctioneer—

(i) obtains the client’s written acknowledgment that the client—

(A) is aware that the auctioneer or trainee is interested in obtaining a beneficial interest in the property; and

(B) consents to the auctioneer or trainee obtaining the interest; and

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

(b) for the sale of property—the auctioneer does not accept commission or other reward for the sale; and

(c) the client is in substantially as good a position as if the property were sold for fair market value.

(5) If the auctioneer or trainee auctioneer has not obtained the acknowledgment mentioned in subsection (4)(a)(i) and the auctioneer or trainee knows, or ought to know, an associate of the auctioneer or trainee intends bidding at the auction, the auctioneer or trainee 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 auctioneer or trainee and intends bidding at the auction.

(6) If the auctioneer or trainee auctioneer complies with subsection (5), the auctioneer or trainee is taken to have satisfied subsection (4)(a)(i).

(7) It is a defence to a prosecution under subsection (2)(b) for the auctioneer to show that the auctioneer was not aware the trainee obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

Additional orders court may make

218.(1) If a court convicts a person of an offence against section 216(2) or (4),[108] the court may—

(a) by order, declare that the option is ineffective; or

(b) if the property is sold—order the convicted person to pay to the client an amount the court decides is appropriate having regard to the profits resulting from the person obtaining the option.

[108] Section 216 (Beneficial interest—options)

(2) If a court convicts a person of an offence against section 217(2) or (3), the court may—

(a) by order—

(i) direct that the property be retransferred to the client at the convicted person's expense; and

(ii) direct the convicted person to pay to the client the amount of the commission or other reward for the sale; or

(b) if, for any reason the court considers just, the property can not be retransferred—by order, direct the convicted person to pay to the client—

(i) an amount the court decides is appropriate having regard to the profits resulting from the person obtaining the beneficial interest in the property; and

(ii) the amount of the commission or other reward for the sale.

(3) For the purposes of making an order under subsection (1)(b) or (2)(b), the court may—

(a) order that the property be valued by a person appointed by the court; and

(b) make any order necessary to allow the valuation to be undertaken.

(4) If the court makes or refuses to make an order under subsection (1), (2) or (3), an appeal against the order or refusal may be made to a District Court in the same way a penalty imposed may be appealed.

(5) The court may also make an order for costs it considers appropriate.

(6) An order may be made under this section on the conviction, whether or not a penalty is imposed.

Non-application of s 217

219. Section 217 does not apply in relation to livestock sales if the auctioneer obtains the client's written acknowledgment that the client—

(a) is aware that the auctioneer or trainee auctioneer is interested in obtaining a beneficial interest in the livestock; and

(b) consents to the auctioneer or trainee auctioneer obtaining the interest.

Division 6—Representations about finance

Definition for div 6

220. In this division—

"contract", in relation to the sale of land to which this division applies, includes any document that legally binds, or is intended to legally bind, a buyer in relation to the sale.

Representations about availability of finance

221.(1) An auctioneer must ensure a proposed buyer of land is given a written statement under this section if the auctioneer or a trainee auctioneer acting under the supervision or instruction of the auctioneer has made a representation to the proposed buyer about finance for the purchase of the land.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) The statement must be given to the proposed buyer before the buyer signs any contract in relation to the land.

(3) The statement must include the following details—

(a) the land, clearly identified, to which the statement relates;

(b) the names and addresses of the seller of the land and the proposed buyer;

(c) whether a representation to the proposed buyer about finance has been made by the auctioneer or a trainee auctioneer acting under the supervision or instruction of the auctioneer;

(d) a clear statement of the representation, and the particulars of the representation, made to the proposed buyer;

(e) the date on which the statement is given;

(f) any other thing that may be prescribed under a regulation.

(4) The statement must be signed by the auctioneer or someone authorised to sign for the auctioneer and the proposed buyer.

(5) The auctioneer must—

(a) keep a copy of the signed statement at the auctioneer's place of business; and

(b) make it available for immediate inspection by the chief executive or an inspector who asks to see it.

Maximum penalty for subsection (5)—200 penalty units or 2 years imprisonment.

Buyer's rights after misrepresentation about availability of finance

222.(1) A buyer of land, by written notice (**"avoidance notice"**) given to the seller of the land or the auctioneer, may avoid a contract for the sale of the land if—

(a) the auctioneer or a trainee auctioneer acting under the supervision or instruction of the auctioneer has made a representation about the availability of finance for the purchase of the land to the buyer; and

(b) the auctioneer does not ensure that finance is made available in accordance with the representation; and

(c) the buyer is materially affected by the auctioneer's failure.

(2) The avoidance notice must be given to the seller or auctioneer at or before the time the contract is due to be completed or immediately after that time.

(3) The seller and the auctioneer are liable at law, jointly and severally, for the repayment to the buyer of all amounts paid by the buyer under the contract if the contract is avoided—

(a) by the buyer under subsection (1); or

(b) by the seller because the buyer has failed to pay in terms of the contract the purchase price or part of the purchase price because of a representation mentioned in subsection (1).

(4) An auctioneer who is liable at law under subsection (3) for the repayment to the buyer of an amount paid by the buyer under the contract must repay the amount within 14 days after becoming liable.

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

(5) The buyer may recover an amount mentioned in subsection (3) as a debt in a court of competent jurisdiction.

(6) Judgment recovered against either person liable under subsection (3) for an amount repayable under that subsection does not bar an action against the other person.

(7) However, if separate actions are brought—

(a) the amounts recoverable under the judgments given in the actions must not be more, taken together, than the amount repayable to the buyer; and

(b) in the later of the 2 actions, the plaintiff is not entitled to costs unless the court decides there were reasonable grounds for bringing the action.

(8) If a representation is made by the auctioneer or trainee auctioneer without the seller's knowledge, connivance or consent, the seller may recover from the auctioneer—

(a) an amount paid under the contract and not received by the seller that the seller has repaid to the buyer; and

(b) an amount for damages suffered by the seller because of the buyer's avoidance of the contract.

(9) Subject to subsection (1), this section does not—

(a) make the contract illegal or ineffective; or

(b) empower a party to avoid the contract.

Application of ss 221 and 222

223.(1) Sections 221 and 222[109] do not apply to a representation—

(a) that the seller will transfer the land to the proposed buyer on the condition the buyer executes a mortgage in the seller's favour to

[109] Sections 221 (Representations about availability of finance) and 222 (Buyer's rights after misrepresentation about availability of finance)

secure an amount payable under a contract of sale for the land; or

(b) that the terms of the sale will be or will include a provision that the purchase price or part of the purchase price is or may be payable by instalments.

(2) An arrangement is ineffective to the extent that it purports to exclude, change or restrict the application of section 221 or 222 or this section.

Liability to punishment under s 221 or 222 additional to other liabilities at law

224.(1) Liability to punishment under section 221 or 222 is in addition to other liabilities at law imposed under section 222.

(2) For subsection (1), it is immaterial whether an auctioneer has not been prosecuted or, if prosecuted, has or has not been convicted for an offence against section 221 or 222.

Division 7—Lands not lawfully useable for residential purposes

Definition for div 7

225. In this division—

"vacant land" means land on which there are no structural improvements, other than fencing.

Application of div 7

226. This division applies to a sale or proposed sale of vacant land if—

(a) the sale is by an auctioneer either as agent for another or as principal; and

(b) the land is within—

(i) the City of Brisbane area; or

(ii) a local government area or joint local government area under the *Local Government Act 1993*; and

(c) the land can not, as at the day of sale, be lawfully used for residential purposes.

Notice to be given about vacant land

227.(1) An auctioneer must—

(a) immediately before the auction, announce that the land can not, as at the day of auction, be lawfully used for residential purposes; and

(b) immediately after the auction, give to the proposed buyer a written statement under this section.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) The auctioneer must give the statement to the proposed buyer before the buyer signs any contract in relation to the sale.

(3) The statement must include the following details—

(a) the land, clearly identified, to which the statement relates;

(b) the names and addresses of the seller of the land and the proposed buyer;

(c) a clear statement that the use of the land for residential purposes is unlawful;

(d) a clear statement that if the buyer erects on the land a dwelling house or otherwise uses the land for residential purposes contrary to law—

(i) the buyer may commit an offence; and

(ii) a named local government may be lawfully empowered to demolish the dwelling house or other residential structure; and

(e) the date on which the statement is given;

(f) any other thing that may be prescribed under a regulation.

(4) The statement must be signed by the auctioneer and the proposed buyer.

(5) The auctioneer must—

(a) keep a copy of the signed statement at the auctioneer's place of business; and

(b) make it available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units or 2 years imprisonment.

(6) An arrangement is ineffective to the extent that it purports to exclude, change or restrict the application of this section.

Buyer's rights if notice not given or materially defective

228.(1) A buyer of land, by written notice (**"avoidance notice"**) given to the seller of the land or the auctioneer, may avoid a contract for the sale of the land if—

(a) the buyer has not been given the notice under section 227; or

(b) the notice has been given to the buyer, but the notice is defective in a material way.

(2) The avoidance notice must be given to the seller or auctioneer within 6 months after the day the buyer entered into the contract.

(3) The seller and the auctioneer are liable at law, jointly and severally, for the repayment to the buyer of all amounts paid by the buyer under the contract if the contract is avoided by the buyer under subsection (1).

(4) An auctioneer who is liable at law under subsection (3) for the repayment to the buyer of an amount paid by the buyer under the contract must repay the amount within 14 days after becoming liable.

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

(5) The buyer may recover an amount mentioned in subsection (3) as a debt in a court of competent jurisdiction.

(6) Judgment recovered against either person liable under subsection (3) for an amount repayable under that subsection does not bar an action against the other person.

(7) However, if separate actions are brought—

(a) the amounts recoverable under the judgments given in the actions must not be more, taken together, than the amount repayable to the buyer; and

(b) in the later of the 2 actions, the plaintiff is not entitled to costs unless the court decides there were reasonable grounds for bringing the action.

(8) If the buyer avoids the contract under this section after the contract is completed, the buyer must, after repayment of all amounts recoverable by the buyer under subsection (3)—

(a) sign the documents presented to the buyer necessary to reconvey title to the land to the seller or the seller's nominee; and

(b) deliver to the seller or the seller's nominee any instrument of title in the buyer's possession or under the buyer's control.

(9) The buyer is not liable for any costs associated with a reconveyance under subsection (8).

Liability to punishment under s 227 or 228 additional to other liabilities at law

229.(1) Liability to punishment under section 227 or 228[110] is in addition to other liabilities at law imposed under section 228.

(2) For subsection (1), it is immaterial whether an auctioneer has not been prosecuted or, if prosecuted, has or has not been convicted for an offence against section 227 or 228.

Division 8—Sales of livestock

Sales of livestock

230.(1) This section applies to sales of livestock by an auctioneer.

(2) The auctioneer may pay over the proceeds from the sale to the person (**"client"**) appointing the auctioneer to conduct the auction only if—

(a) the auctioneer—

110 Section 227 (Notice to be given about vacant land) or 228 (Buyer's rights if notice not given or materially defective)

(i) has known the client for at least 1 year; and

(ii) in the auctioneer's opinion, the client is a person of good repute; and

(ii) has no reason to believe the client is not lawfully entitled to sell the livestock; or

(b) the auctioneer receives a certificate for the client from a referee.

(3) A referee may give a certificate for the client only if the referee—

(a) has known the client for at least 1 year; and

(b) in the referee's opinion, the client is a person of good repute; and

(c) has no reason to believe the client is not lawfully entitled to sell the livestock.

(4) In this section—

"referee" means a person the auctioneer has known for at least 1 year who, in the auctioneer's opinion, is a person of good repute.

Protection for auctioneer

231.(1) This section applies if a court finds, in relation to livestock sold by an auctioneer, that the client was not lawfully entitled to sell the livestock.

(2) An auctioneer who, acting in good faith and without negligence, complies with section 230 is not liable to the owner of the livestock merely because the auctioneer took possession or gave delivery of the livestock.

Division 9—Guarantee of title for motor vehicles

Guarantee of title for motor vehicles

232.(1) This section applies if a used motor vehicle is to be sold by auction to someone else (**"buyer"**).

(2) The auctioneer or, if the auctioneer is auctioning the vehicle for a motor dealer, the dealer, must ensure the buyer gains clear title to the motor vehicle at the time property in the vehicle passes to the buyer.

Maximum penalty—200 penalty units.

(3) In a proceeding for an offence against subsection (2), it is a defence for the defendant to prove that the defendant took reasonable precautions and exercised proper diligence to ensure subsection (2) is complied with.

(4) The auctioneer must, immediately after property in the vehicle passes to the buyer, give the buyer an approved form stating—

(a) particulars about the vehicle, including its odometer reading at the time property passes; and

(b) the auctioneer or, if the auctioneer auctioned the vehicle for a motor dealer, the dealer, ensures the buyer gains clear title to the vehicle at the time property passes.

Maximum penalty—200 penalty units.

(5) The auctioneer must, within 48 hours after property in the vehicle passes to the buyer, give the buyer a security interest certificate for the vehicle issued after property in the vehicle passes.

Maximum penalty—200 penalty units.

(6) If the security interest certificate for the vehicle shows that a security interest is registered for the vehicle—

(a) the sale is ineffective from the beginning; and

(b) the auctioneer or, if the auctioneer is auctioning the vehicle for a motor dealer, the dealer, must do everything in the person's power to return the buyer to the position the buyer was in before the vehicle was purchased including, for example, by paying to the buyer—

(i) the amount the buyer paid for the vehicle; and

(ii) any amount paid for vehicle inspection, auctioneer's charges or stamp duty.

(7) An amount payable to the buyer under subsection (6)(b) may be recovered as a debt in a court of competent jurisdiction.

(8) The auctioneer must ask the buyer to sign an approved form acknowledging receipt of the documents mentioned in subsection (4) and (5).

(9) The auctioneer must give the original of the form mentioned in subsection (4) to the buyer and keep a copy of the form.

Maximum penalty—200 penalty units.

(10) The auctioneer may charge the buyer an amount for the provision of the security interest certificate, not greater than the relevant amount prescribed under the *Motor Vehicles Securities Act 1986* for the issue of the certificate to the auctioneer.

Maximum penalty—200 penalty units.

(11) A proceeding against an auctioneer or motor dealer for an offence against this section does not affect the civil liability of the auctioneer or dealer.

Division 10—Code of conduct

Code of conduct

233. A regulation may prescribe a code of conduct about auctioneering practice that may include the following—

(a) setting conduct standards for auctioneers and trainee auctioneers;

(b) establishing principles for fair trading;

(c) providing for a system of complaint resolution.

Complaints about conduct

234.(1) A person aggrieved by the conduct of an auctioneer or trainee auctioneer may complain in writing to the chief executive of the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action in relation to the conduct allowed under this Act.

(3) The investigation may take place and action may be taken even though the person is no longer an auctioneer or trainee auctioneer.[111]

[111] Breach of a code of conduct is a ground for starting disciplinary proceedings under section 438 (Grounds for starting disciplinary proceeding).

PART 4—STATUTORY WARRANTY

Definitions for pt 4

235. In this part—

“auctioneer”, for the sale of used motor vehicles, includes a person performing the functions of an auctioneer without a licence.

“business day”, for an auctioneer, means a day, other than Saturday, Sunday or a public holiday, when the auctioneer’s place of business is open for business.

“warranted vehicle” means a used motor vehicle other than—

(a) a commercial vehicle; or

(b) a caravan; or

(c) a motor cycle.

Meaning of “defect”

236. A warranted vehicle has a **“defect”** for this part 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 be reasonably relied on to perform its intended function.

Meaning of “warranty period”

237.(1) The **“warranty period”** of a warranted vehicle starts when the vehicle is sold and ends—

(a) at 5 pm on the first business day 1 month after the day the vehicle is sold; or

(b) at the time the vehicle travels 1 000 km after it is sold;

whichever happens first.

(2) The period mentioned in subsection (1)(a) is extended by 1 day for each day or part of a day a warranted vehicle is not in the possession of the buyer of the vehicle if—

(a) the buyer of the vehicle has complied with section 243(1);[112] and

(b) a defect in the vehicle is being repaired by, or at the direction of, the auctioneer who sold the vehicle under the statutory warranty.

Application of pt 4

238.(1) This part applies to each warranted vehicle sold by an auctioneer, if the vehicle is auctioned by the auctioneer on the auctioneer's own behalf.

(2) However, this part does not apply to the sale of—

(a) a commercial vehicle; or

(b) an unregistered motor vehicle that is—

(i) incapable of being registered in Queensland because of its design; or

(ii) sold for wrecking or dismantling; or

(c) a motor vehicle to a motor dealer; or

(d) a motor vehicle sold on consignment, unless the owner of the vehicle is an auctioneer or motor dealer; or

(e) another motor vehicle prescribed under a regulation.

(3) Also, this part does not apply to the sale of a motor vehicle by the public trustee if the public trustee is acting as agent for another government entity.

(4) In this section—

"government entity" has the meaning given by the *Public Service Act 1996*.

Certain vehicles without statutory warranty to be identified when offered for sale

239.(1) A motor vehicle mentioned in section 238(2)(b) or (d) may be advertised, or displayed, for sale only if it is advertised, or displayed, for sale as a vehicle that does not have a statutory warranty in the way provided

112 Section 243 (Buyer's obligations under statutory warranty)

under a regulation.

Maximum penalty—100 penalty units.

(2) If a motor vehicle mentioned in section 238(2)(b) or (d) is being put to auction by an auctioneer, the auctioneer must announce, immediately before the auction, that the vehicle does not have a statutory warranty.

Maximum penalty—100 penalty units.

Buyer to be given notice about statutory warranty

240.(1) An auctioneer must, immediately after the sale of a warranted vehicle, give the buyer of the vehicle a written notice stating—

(a) the length of the warranty period for the vehicle; and

(b) the defects to which the statutory warranty does not apply.

Maximum penalty—100 penalty units.

(2) An auctioneer must, immediately after the sale of an unwarranted vehicle, give the buyer of the vehicle written notice that the vehicle does not have a statutory warranty.

Maximum penalty—100 penalty units.

(3) The buyer must acknowledge receipt of a notice given under subsection (1) or (2) by signing a copy of it.

(4) In this section—

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

Statutory warranty

241.(1) If an auctioneer sells a warranted vehicle, the auctioneer (**"seller"**) warrants that—

(a) the vehicle is free from defects at the time of sale and for the warranty period; and

(b) defects in the vehicle reported during the warranty period will be repaired free of charge.

(2) In subsection (1), an auctioneer **"sells"** a warranted vehicle if the auctioneer—

(a) owns the motor vehicle; and

(b) sells the vehicle personally or causes the vehicle to be sold on consignment.

(3) In this section—

“defects” does not include defects to which the statutory warranty does not apply.

Defects not covered by statutory warranty

242. The following defects in a warranted vehicle are defects to which the statutory warranty does not apply—

(a) a defect in—

(i) a tyre; or

(ii) a battery; or

(iii) a light; or

(iv) a radiator hose; or

(v) a vehicle accessory prescribed under a regulation; or

(vi) something else prescribed under a regulation;

(b) a defect in the vehicle’s paintwork or upholstery that should have been apparent on any reasonable inspection of the vehicle before the buyer took delivery;

(c) a defect after the buyer takes delivery—

(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.

Buyer’s obligations under statutory warranty

243.(1) If the buyer of a warranted vehicle believes the vehicle has a defect the seller of the vehicle is obliged to repair under this part, the buyer must—

(a) give the seller written notice of the defect (**“defect notice”**) before the end of the warranty period; and

(b) deliver the warranted vehicle—

(i) to the seller to repair the defect; or

(ii) to someone else nominated by the seller by signed writing given to the buyer to repair the defect.

(2) The buyer is taken to deliver the vehicle and the seller 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 seller refuses to accept delivery of the vehicle.

(3) In this section—

“seller” includes someone apparently working for the seller at the seller’s place of business.

Seller to record details of extension of warranty period

244. The seller must keep a record, in the way prescribed under a regulation, of the day the warranted vehicle is delivered under section 243(1)(b) and the day the vehicle is returned to the buyer.

Maximum penalty—100 penalty units.

Seller to advise whether defect covered by statutory warranty

245.(1) This section applies if a defect notice is given, and the vehicle is delivered, under section 243.

(2) The seller must advise the buyer in writing (**“warranty advice”**) whether the seller accepts or refuses to accept that the defect is a defect to which the statutory warranty applies.

(3) If the seller fails to give the warranty advice within 5 business days of receiving the defect notice and delivery of the vehicle, the seller is taken to have given a warranty advice accepting that the defect is one to which the statutory warranty applies.

(4) In this section—

"business day" means a day other than Sunday or a public holiday.

Seller's obligation to repair defects

246.(1) If the seller accepts that the defect is one to which the statutory warranty applies, the seller must repair the defect at the seller's expense.

(2) The seller must ensure that the defect is repaired within 14 days.

Maximum penalty—200 penalty units.

(3) If the seller nominates someone else to repair the vehicle, the seller must advise the buyer of the other person's name and the address where the defect is to be repaired.

(4) The seller 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.

(5) The seller's obligation to repair the defect under this section continues even though the seller is no longer performing the functions of an auctioneer.

Seller's failure to repair

247.(1) This section applies if the seller has by warranty advice or otherwise—

(a) refused to accept that the defect is one to which the statutory warranty applies; or

(b) accepted that the defect is one to which the statutory warranty applies but—

  (i) failed to repair a defect within 14 days; or

  (ii) failed to repair the defect so that the defective part can be reasonably relied on to perform its intended function.

(2) The buyer may refer the matter to a small claims tribunal.

(3) A small claims tribunal may, in addition to the orders it is empowered to make under the *Small Claims Tribunals Act 1973*, section 20,[113] make the following orders—

(a) an order that the defect is or is not a defect to which the statutory warranty applies;

(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.

(4) Also, the tribunal may make an order that the seller pay to the buyer a stated amount the tribunal decides is the reasonable cost of having a defect repaired if—

(a) the seller 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) the tribunal decides that the defect was one to which the statutory warranty applied.

(5) The small claims tribunal may make an order under subsection (3)(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 date 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, do not exceed 1 month.

(6) If, after the matter is heard by a small claims tribunal, an order is made by the tribunal in the buyer's favour and the seller contravenes the order, the contravention is a ground for starting disciplinary proceedings under section 438.[114]

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113 Section 20 (Orders of tribunals)

114 Section 438 (Grounds for starting disciplinary proceeding)

Applications for more than prescribed amount

248.(1) In this section—

"prescribed amount" has the meaning given by the *Small Claims Tribunals Act 1973.*

(2) This section applies to an application if—

(a) a provision of this part provides that an application may be made to a small claims tribunal; and

(b) the application seeks the payment of an amount (**"application amount"**) greater than the prescribed amount.

(3) In a provision of this part about the application—

(a) a reference to a small claims tribunal is taken to be a reference to a court having jurisdiction for the recovery of a debt equal to the application amount; and

(b) the provision applies with all necessary changes, and with any changes prescribed under the regulations, as if the small claims tribunal were the court.

PART 5—GENERAL

Division 1—Auctioneers

Registered office

249. An auctioneer's **"registered office"** is—

(a) for an auctioneer who is a principal licensee—

(i) the place the auctioneer specifies in the auctioneer's application for an auctioneer's licence as the auctioneer's principal place of business; or

(ii) another place notified to the chief executive by the auctioneer in the approved form as the auctioneer's principal place of business; and

(b) for an auctioneer who is an employed licensee—

(i) the place the auctioneer specifies in the auctioneer's application for an auctioneer's licence as the auctioneer's business address; or

(ii) another place notified to the chief executive by the auctioneer in the approved form as the auctioneer's business address.

Auctioneer must notify chief executive of change in place of business etc.

250.(1) An auctioneer who is a principal licensee must notify the chief executive in the approved form of—

(a) any change in the auctioneer's registered office within 14 days of the change; or

(b) the closure of any place where the auctioneer carries on business within 14 days of the closure; or

(c) the opening of any place where the auctioneer carries on business within 14 days of the opening.

Maximum penalty—200 penalty units.

(2) An auctioneer who is an employed licensee must notify the chief executive in the approved form of any change in the auctioneer's registered office within 14 days of the change.

Maximum penalty—200 penalty units.

Publication of name of licensee

251.(1) An auctioneer who is a principal licensee must display at each place the auctioneer carries on business, in the way that may be prescribed under a regulation—

(a) the auctioneer's name; and

(b) if the auctioneer is not the person in charge of the auctioneer's business at the place—the name of the auctioneer who is in charge at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(2) An auctioneer who conducts an auction must display at the auction, in the way and for the period prescribed under a regulation—

(a) the auctioneer's name; and

(b) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(3) An auctioneer who is a principal licensee must not publish, or permit to be published, in a newspaper or elsewhere an advertisement for the purpose of the auctioneer's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

Division 2—Trainee auctioneers

Registered office

252. A trainee auctioneer's **"registered office"** is—

(a) the registered office of the trainee's supervising auctioneer specified by the trainee in the trainee's application for a trainee auctioneer's licence; or

(b) the registered office of another supervising auctioneer notified to the chief executive by the trainee in the approved form.

Trainee auctioneer must notify chief executive of change in registered office

253. A trainee auctioneer must notify the chief executive in the approved form of any change in the trainee's registered office within 14 days of the change.

Maximum penalty—200 penalty units.

PART 6—OFFENCES

Acting as auctioneer

254.(1) A person must not perform a function that may be done under the authority of an auctioneer's licence unless the person—

(a) holds an auctioneer's licence and the performance of the function is authorised under the person's licence; or

(b) is otherwise permitted under an Act to perform the function.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A person must not act as an auctioneer unless—

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

(b) the act is otherwise permitted under an Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) Without limiting the ways a person may act as an auctioneer, a person **"acts"** as an auctioneer if the person—

(a) performs an auction; or

(b) advertises or notifies or states that the person performs auctions or is willing to perform auctions; or

(c) in any way holds out as being ready to perform auctions.

Acting as trainee auctioneer

255. A person must not perform a function that, under this Act, may be done under the authority of a trainee auctioneer's licence unless—

(a) the person holds a trainee auctioneer's licence and the performance of the function is authorised under the person's licence; or

(b) the person is otherwise permitted under an Act to perform the function.

Maximum penalty—200 penalty units or 2 years imprisonment.

Auctioneer must not act for more than 1 party

256.(1) An auctioneer must not accept appointment to act for more than 1 party to a transaction.

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

(2) If an auctioneer accepts appointment to act for more than 1 party to a transaction, each appointment is ineffective from the beginning.

Example of subsection (2)—

Accepting appointment to act for both seller and buyer in 1 transaction.

(3) An auctioneer does not contravene subsection (1) and subsection (2) does not apply if the transaction is one involving a livestock sale.

Trainee auctioneer must not carry on business etc.

257.(1) A trainee auctioneer must not—

(a) carry on or advertise, notify or state that the trainee carries on the business of an auctioneer; or

(b) receive, hold, or deal with an amount from a sale conducted by the trainee under the authority of the trainee's licence.

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

(2) Subsection (1)(b) does not apply to a trainee auctioneer if the trainee receives, holds, or deals with the amount as trust monies under a trust account operated by the trainee under the authority of another licence held by the trainee.

Production of licence

258. An auctioneer or trainee auctioneer must, if asked by a person with whom the auctioneer or trainee is dealing, produce the auctioneer's or trainee's licence for inspection by the person.

Maximum penalty—100 penalty units.

CHAPTER 7—MOTOR DEALERS AND THEIR SALESPERSONS

PART 1—MOTOR DEALERS

Division 1—Motor dealer's licence

What a motor dealer's licence authorises

259.(1) A motor dealer's licence authorises the holder of the licence (**"motor dealer"**) to perform the following functions in the carrying on of a business of motor dealing—

(a) to acquire, primarily for resale, used motor vehicles;

(b) to acquire and break-up used motor vehicles for sale, as parts;

(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.

(2) A motor dealer may perform the functions as an employee of another motor dealer who carries on the business of motor dealing.

(3) In this section—

"business of motor dealing" does not include the business of a financier.

Division 2—Motor dealer responsible for acts and omissions of salespersons

Responsibility for acts and omissions of motor salespersons

260.(1) A motor dealer who is a principal licensee must take reasonable steps to ensure each motor salesperson employed by the agent is properly supervised, acts only within the scope of the salesperson's authority and complies with this Act.

(2) A motor dealer who is an employed licensee in charge of a motor dealer's business at a place must take reasonable steps to ensure each motor salesperson employed at the place is properly supervised, acts only within the scope of the salesperson's authority and complies with this Act.

(3) A motor dealer who fails to meet the dealer's obligations under subsection (1) or (2) is liable to disciplinary action under chapter 11.[115]

PART 2—MOTOR SALESPERSONS

Division 1—Introduction

Meaning of "motor salesperson"

261.(1) A **"motor salesperson"** is a person employed by a motor dealer to perform any of the functions of a motor dealer.

(2) To prevent any doubt, it is declared that a person employed by a motor dealer is not a motor salesperson if the person's duties are only secretarial or clerical.

Division 2—Provisions about employment

Persons not eligible for employment as motor salespersons

262.(1) Each of the following persons is not eligible to be employed as a motor salesperson—

(a) a person who has not turned 18 years;

(b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence;

(c) a person who is subject to an order of a Magistrates Court or any other court or a regulatory or disciplinary body, either within or

[115] Chapter 11 (Compliance, discipline and claims against the fund)

outside Queensland, declaring the person ineligible to be employed as, or not to be entitled to perform the functions of, a motor salesperson;

(d) a person whose name is entered in the register of ineligible persons as ineligible to be employed as a motor salesperson;

(e) a corporation.

(2) A person must not knowingly and falsely represent to someone else that the person is eligible to be employed as a motor salesperson.

Maximum penalty for subsection (2)—200 penalty units or 1 year's imprisonment.

Employment as motor salespersons

263. A motor dealer must not employ someone (**"proposed employee"**) as a motor salesperson unless the dealer has—

(a) sighted a record, not more than 1 year old, of the proposed employee's criminal history and is satisfied, after sighting the record, that the person is not ineligible under section 262(1)(b) to be employed as a motor salesperson; and

(b) taken reasonable action, including action to inspect the register of ineligible persons,[116] to satisfy himself or herself that the proposed employee is not ineligible to be employed as a motor salesperson.

Maximum penalty—200 penalty units.

Motor dealer must give salespersons "employment authority"

264.(1) Immediately after the motor salesperson starts employment, the motor dealer must give the salesperson an employment authority.

Maximum penalty—200 penalty units.

(2) In this section—

116 The chief executive is required to keep a register of ineligible persons under section 540.

"employment authority", for a motor salesperson, means a statement clearly specifying the functions of a motor dealer the salesperson is authorised by the dealer to perform for the dealer during the salesperson's employment by the dealer.

Court may declare person as ineligible person

265.(1) A court may declare by order a person to be a person who is not eligible to be employed as a motor salesperson.

(2) The court may make an order under subsection (1) only if it is satisfied—

(a) the person has contravened a code of conduct made under part 3, division 5;[117] or

(b) the person has been convicted of an offence against this Act and, having regard to the nature of the offence, the court considers it is appropriate to make the order; or

(c) the person has been convicted of an offence mentioned in section 262(1)(b).[118]

(3) If an order is made under subsection (1), the person's name and the other details that may be prescribed under a regulation must be entered in the register of ineligible persons.

(4) The court may make an order subject to stated conditions and may vary or revoke the order at any time.

(5) An order may be made—

(a) on conviction of a person of an offence mentioned in subsection (2)(b) or (c)—on the prosecutor's application or by the court on its own initiative; or

(b) at any time—on the application of the chief executive.

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117 Part 3 (Conduct provisions), division 5 (Code of conduct)

118 Section 262 (Persons not eligible for employment as motor salespersons)

Division 3—Functions of motor salespersons

Functions of motor salespersons

266. A motor salesperson for a motor dealer may, as the employee of the motor dealer and subject to the person's employment authority under section 264, perform the functions the motor dealer is authorised to perform under this Act.

PART 3—CONDUCT PROVISIONS

Division 1—Licensee to be in charge of a licensee's business

Carrying on of business under motor dealer's licence

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

(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 functions of a motor dealer; and

(c) the individual is a suitable person to hold a licence.

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

268.(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;[119] and

(b) if the motor dealer has more than 1 place of business—ensure

[119] The **"registered office"** of a motor dealer who is a principal licensee is the motor dealer's principal place of business. See section 295 (Registered office).

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 or 1 year's imprisonment.

(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 chapter 2 of the Criminal Code of an offence or for section 529[120]—200 penalty units; or

(b) for a corporation—1 000 penalty units.

(3) To prevent any doubt, it is declared that a motor dealer can not be in charge of a motor dealer's business at more than 1 place.

Division 2—Consignment selling

Appointment—sale on consignment

269.(1) A motor dealer who is asked by a person (**"client"**) to sell the person's motor vehicle on consignment must not act for the person unless the person first appoints the motor dealer in writing.

Maximum penalty—200 penalty units.

(2) The appointment may be for the performance of—

(a) a particular service (**"single appointment"**); or

(b) a number of services over a period (**"continuing appointment"**).

(3) The appointment must—

120 Section 529 (Executive officers must ensure corporation complies with Act)

(a) state the term of the appointment; and

(b) state the service to be performed by the motor dealer and how it is to be performed; and

(c) state—

(i) in the way prescribed under a regulation—that fees, charges and commission payable for the service are negotiable; and

(ii) if commission is expressed as a percentage of the reserve price—the amount of commission expressed in dollars based on the reserve price; and

(d) state—

(i) the fees, charges and commission payable for the service; and

(ii) the expenses, including advertising expenses and the costs of preparing the vehicle for sale, the motor dealer is authorised to incur in connection with—

(A) for a single appointment—the performance of the service; or

(B) for a continuing appointment—the performance of each service or category of service; and

(iii) any condition, limitation or restriction on the performance of the service; and

(e) state when the fees, charges and commission for the service become payable; and

(f) state any other information that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(4) A continuing appointment must state—

(a) the date the appointment ends; and

(b) the appointment may be revoked at any time by signed writing given to the other party.

Maximum penalty—200 penalty units.

(5) Subsection (3)(c)(ii) does not apply to a continuing appointment.

(6) The appointment must be signed by the client and the motor dealer or someone authorised or apparently authorised to sign for the dealer.

(7) The motor dealer must give a copy of the signed appointment to the client.

Maximum penalty—200 penalty units.

(8) If an appointment under this section authorises a sale by auction, an appointment under section 207[121] is not required.

Trade-ins

270.(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 property offered as a trade-in as part of a separate transaction between the dealer and the buyer.

Division 3—Recovery of commission or reward

Restriction on commission payable as a percentage

271.(1) This section applies to a motor dealer who performs a function of selling a motor vehicle on consignment for someone and claims commission worked out as a percentage for the performance of the function.

(2) The motor dealer must not claim commission worked out as a percentage of an amount more than the actual sale price of the vehicle.

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

[121] Section 207 (Appointment of auctioneer—general)

Restriction on remedy for commission or reward

272.(1) A person must not sue for, or recover or retain, a commission, reward or expense for a sale of a motor vehicle on consignment unless—

(a) at the time the function was performed—

(i) the person held a motor dealer's licence; and

(ii) the person was authorised under the person's licence to perform the function; and

(b) the person has been properly appointed under division 2[122] by the person to be charged with the commission, reward or expense.

Maximum penalty—200 penalty units.

(2) A person must not sue for, or recover or retain, a commission or reward for the performance of a function as a motor dealer that is more than—

(a) the amount of the commission, reward or expense stated in the appointment given under section 269(3);[123] or

(b) if commission rates for the performance of the function have been prescribed under a regulation—the lesser of the amount stated in the appointment for the performance of the function and the commission allowed under the regulation for the performance of the function.

Maximum penalty—200 penalty units.

(3) A person must not sue for, or recover or retain, expenses for the performance of a function as a motor dealer that is more than the lesser of the following amounts—

(a) the amount of the expenses stated in the appointment given under section 269(3) and actually expended;

(b) if the amount of expenses that may be incurred in relation to the performance of the function is limited under a regulation—the

122 Division 2 (Consignment selling)

123 Section 269 (Appointment—sale on consignment)

amount allowed under the regulation.

Maximum penalty—200 penalty units.

Excess commission etc. to be repaid

273.(1) This section applies if—

(a) a person is convicted of an offence against section 271(2) or 272;[124] and

(b) the court before whom the person is convicted is satisfied on the balance of probabilities the person, in connection with the offence, has recovered or retained from someone (**"client"**) for whom the person performed a function 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 order may be filed in a court having jurisdiction for the recovery of a debt of an equal amount and enforced as a judgment of that court.

Division 4—Interests in property

Definition for div 4

274. In this division—

"obtain" includes being in any way concerned in obtaining.

Beneficial interest—options

275.(1) A motor dealer commits an offence if any of the following persons obtain from the owner of a used motor vehicle, other than another motor dealer, (the **"client"**) an option to purchase the vehicle in which the dealer or salesperson has a beneficial interest—

[124] Section 271 (Restriction on commission payable as a percentage) or 272 (Restriction on remedy for commission or reward)

(a) the motor dealer;

(b) a motor salesperson employed by the dealer.

Maximum penalty—200 penalty units or 3 years imprisonment.

(2) A motor salesperson employed by the motor dealer commits an offence if the salesperson obtains from the client 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 the vehicle if any of the following persons have a beneficial interest in an option to purchase the vehicle—

(a) the motor dealer;

(b) a motor salesperson employed by the dealer.

Maximum penalty—200 penalty units or 3 years imprisonment.

(4) It is a defence to a prosecution under subsection (1)(b) for the motor dealer to show that the dealer was not aware of the beneficial interest held by the salesperson and took reasonable precautions and exercised proper diligence to prevent the contravention.

Beneficial interest—other than options

276.(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 275 applies.

(2) The motor dealer commits an offence if any of the following persons obtain a beneficial interest in the vehicle—

(a) the motor dealer;

(b) a motor salesperson employed by the dealer.

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 motor dealer or motor salesperson—

(i) obtains the client's written acknowledgment that the client—

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

(B) consents to the dealer or salesperson obtaining the interest; and

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

(b) the motor dealer and the motor salesperson do not accept commission or other reward for the sale; and

(c) the client is in substantially as good a position as if the motor vehicle were sold at fair market value.

(5) It is a defence to a prosecution under subsection (2)(b) for the motor dealer to show that the dealer was not aware the salesperson obtained the beneficial interest and took reasonable precautions and exercised proper diligence to prevent the contravention.

Additional orders court may make

277.(1) If a court convicts a person of an offence against section 275(1), (2) or (3),[125] the court may—

(a) by order, declare that the option is ineffective; or

(b) if the motor vehicle is sold—order the convicted person to pay to the client an amount the court decides is appropriate having regard to the profits resulting from the person obtaining the option.

(2) If a court convicts a person of an offence against section 276(2) or (3), the court may—

(a) by order—

(i) direct that the motor vehicle be retransferred to the client at the motor dealer's expense; and

(ii) direct the convicted person to pay to the client the amount of the commission or other reward for the sale; or

[125] Section 275 (Beneficial interest—options)

(b) if, for any reason the court considers just, the motor vehicle can not be retransferred—by order, direct the convicted person to pay to the client—

(i) an amount the court decides is appropriate having regard to the profits resulting from the person obtaining a beneficial interest in the motor vehicle; and

(ii) the amount of the commission or other reward for the sale.

(3) For the purposes of making an order under subsection (1)(b) or (2)(b), the court may—

(a) order that the motor vehicle be valued by a person appointed by the court; and

(b) make any order necessary to allow the valuation to be undertaken.

(4) If the court makes or refuses to make an order under subsection (1), (2) or (3), an appeal against the order or refusal may be made to a District Court in the same way a penalty imposed may be appealed.

(5) The court may also make an order for costs it considers appropriate.

(6) An order may be made under this section on the conviction, whether or not a penalty is imposed.

Division 5—Code of conduct

Code of conduct

278. A regulation may prescribe a code of conduct about motor dealing practice that may include the following—

(a) setting conduct standards for motor dealers and motor salespersons;

(b) establishing principles for fair trading;

(c) providing for a system of complaint resolution.

Complaints about conduct

279.(1) A person aggrieved by the conduct of a motor dealer or motor salesperson may complain in writing to the chief executive of the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action in relation to the conduct allowed under this Act.[126]

(3) The investigation may take place and action may be taken even though the person complained about is no longer a motor dealer or motor salesperson.

PART 4—GUARANTEE OF TITLE

Guarantee of title

280.(1) This section applies if a used motor vehicle is to be sold by or for a motor dealer to someone else (**“buyer”**), other than by auction.[127]

(2) The motor dealer must ensure the buyer gains clear title to the motor vehicle at the time property in the vehicle passes to the buyer.

Maximum penalty—200 penalty units.

(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) is complied with.

(4) The motor dealer must, immediately before property in the vehicle is to pass to the buyer—

(a) give the buyer a security interest certificate for the vehicle issued on the day property is to pass; and

(b) give the buyer an approved form stating—

(i) particulars about the vehicle, including its odometer reading at the time property is to pass; and

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[126] Breach of a code of conduct is a ground for starting disciplinary proceedings under section 438 (Grounds for starting disciplinary proceeding).

[127] If the sale is by auction, section 232 (Guarantee of title for motor vehicles) applies.

(ii) the dealer ensures the buyer gains clear title to the vehicle at the time property is to pass; and

(c) ask the buyer to sign an approved form acknowledging receipt of the documents mentioned in paragraphs (a) and (b); and

(d) give the original of the form mentioned in paragraph (b) to the buyer and keep a copy of the form.

Maximum penalty—200 penalty units.

(5) The motor dealer may charge the buyer an amount for the provision of the security interest certificate, not greater than the relevant amount prescribed under the *Motor Vehicles Securities Act 1986* for the issue of the certificate to the dealer.

Maximum penalty—200 penalty units.

(6) A proceeding against a motor dealer for an offence against this section does not affect the civil liability of the dealer.

(7) In this section—

"sold" includes sold on consignment.

PART 5—STATUTORY WARRANTY

Definitions for pt 5

281. In this part—

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

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

"warranted vehicle" means a used motor vehicle other than—

(a) a commercial vehicle; or

(b) a caravan; or

(c) a motor cycle.

Meaning of "defect"

282. A warranted vehicle has a **"defect"** for this part 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 be reasonably relied on to perform its intended function.

Meaning of "warranty period"

283.(1) The **"warranty period"** of a warranted vehicle starts when the vehicle is sold and ends—

(a) at 5 pm on the first business day 1 month after the day the vehicle is sold; or

(b) at the time the vehicle travels 1 000 km after it is sold;

whichever happens first.

(2) The period mentioned in subsection (1)(a) is extended by 1 day for each day or part of a day a warranted vehicle is not in the possession of the buyer of the vehicle if—

(a) the buyer of the vehicle has complied with section 289(1);[128] and

(b) a defect in the vehicle is being repaired by, or at the direction of, the motor dealer who sold the vehicle under the statutory warranty.

Application of pt 5

284.(1) This part applies to each warranted vehicle sold by a motor dealer.

(2) However, this part does not apply to the sale of—

[128] Section 289 (Buyer's obligations under statutory warranty)

(a) a commercial vehicle; or

(b) an unregistered motor vehicle that is—

(i) incapable of being registered in Queensland because of its design; or

(ii) sold for wrecking or dismantling; or

(c) a motor vehicle in the possession, or under the control, of the buyer of the vehicle for a continuous period of at least 3 months immediately before the sale to the buyer; or

(d) a motor vehicle to a motor dealer; or

(e) a motor vehicle sold on consignment, unless the owner of the vehicle is a motor dealer or auctioneer; or

(f) another motor vehicle prescribed under a regulation.

(3) Also, this part does not apply to the sale of a motor vehicle by the public trustee if the public trustee is acting as agent for another government entity.

(4) In this section—

"government entity" has the meaning given by the *Public Service Act 1996*.

Certain vehicles without statutory warranty to be identified when offered for sale

285. A motor vehicle mentioned in section 284(2)(b) or (e) may be advertised, or displayed, for sale only if it is advertised, or displayed, for sale as a vehicle that does not have a statutory warranty in the way provided under a regulation.

Maximum penalty—100 penalty units.

Buyer to be given notice about statutory warranty

286.(1) A motor dealer must, immediately before the sale of a warranted vehicle, give the buyer of the vehicle a written notice stating—

(a) the length of the warranty period for the vehicle; and

(b) the defects to which the statutory warranty does not apply.

Maximum penalty—100 penalty units.

(2) A motor dealer must, immediately before the sale of an unwarranted vehicle, give the buyer of the vehicle written notice that the vehicle does not have a statutory warranty.

Maximum penalty—100 penalty units.

(3) The buyer must acknowledge receipt of a notice given under subsection (1) or (2) by signing a copy of it.

(4) In this section—

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

Statutory warranty

287.(1) If a motor dealer sells a warranted vehicle, the dealer (**"seller"**) warrants that—

(a) the vehicle is free from defects at the time of sale and for the warranty period; and

(b) defects in the vehicle reported during the warranty period will be repaired free of charge.

(2) In subsection (1), a motor dealer **"sells"** a warranted vehicle if the motor dealer—

(a) owns the motor vehicle; and

(b) sells the vehicle personally or causes the vehicle to be sold on consignment.

(3) In this section—

"defects" does not include defects to which the statutory warranty does not apply.

Defects not covered by statutory warranty

288. The following defects in a warranted vehicle are defects to which the statutory warranty does not apply—

(a) a defect in—

(i) a tyre; or

(ii) a battery; or

(iii) a light; or

(iv) a radiator hose; or

(v) a vehicle accessory prescribed under a regulation; or

(vi) something else prescribed under a regulation;

(b) a defect in the vehicle's paintwork or upholstery that should have been apparent on any reasonable inspection of the vehicle before the buyer took delivery;

(c) a defect after the buyer takes delivery—

(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.

Buyer's obligations under statutory warranty

289.(1) If the buyer of a warranted vehicle believes the vehicle has a defect the seller of the vehicle is obliged to repair under this part, the buyer must—

(a) give the seller written notice of the defect (**"defect notice"**) before the end of the warranty period; and

(b) deliver the warranted vehicle—

(i) to the seller to repair the defect; or

(ii) to someone else nominated by the seller by signed writing given to the buyer to repair the defect.

(2) The buyer is taken to deliver the vehicle and the seller 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 seller refuses to accept delivery of the vehicle.

(3) In this section—

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

Seller to record details of extension of warranty period

290. The seller must keep a record, in the way prescribed under a regulation, of the day the warranted vehicle is delivered under section 289(1)(b) and the day the vehicle is returned to the buyer.

Maximum penalty—100 penalty units.

Seller to advise whether defect covered by statutory warranty

291.(1) This section applies if a defect notice is given, and the vehicle is delivered, under section 289.

(2) The seller must advise the buyer in writing (**"warranty advice"**) whether the seller accepts or refuses to accept that the defect is a defect to which the statutory warranty applies.

(3) If the seller fails to give the warranty advice within 5 business days of receiving the defect notice and delivery of the vehicle, the seller is taken to have given a warranty advice accepting that the defect is one to which the statutory warranty applies.

(4) In this section—

"business day" means a day other than Sunday or a public holiday.

Seller's obligation to repair defects

292.(1) If the seller accepts that the defect is one to which the statutory warranty applies, the seller must repair the defect at the seller's expense.

(2) The seller must ensure that the defect is repaired within 14 days.

Maximum penalty—200 penalty units.

(3) If the seller nominates someone else to repair the vehicle, the seller must advise the buyer of the other person's name and the address where the defect is to be repaired.

(4) The seller 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.

(5) The seller's obligation to repair the defect under this section continues even though the seller is no longer carrying on the business, or performing the functions, of a motor dealer.

Seller's failure to repair

293.(1) This section applies if the seller has by warranty advice or otherwise—

(a) refused to accept that the defect is one to which the statutory warranty applies; or

(b) accepted that the defect is one to which the statutory warranty applies but—

(i) failed to repair a defect within 14 days; or

(ii) failed to repair the defect so that the defective part can be reasonably relied on to perform its intended function.

(2) The buyer may refer the matter to a small claims tribunal.

(3) A small claims tribunal may, in addition to the orders it is empowered to make under the *Small Claims Tribunals Act 1973*, section 20,[129] make the following orders—

(a) an order that the defect is or is not a defect to which the statutory warranty applies;

(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.

(4) Also, the tribunal may make an order that the seller pay to the buyer a stated amount the tribunal decides is the reasonable cost of having a defect repaired if—

129 Section 20 (Orders of tribunals)

(a) if the seller 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) the tribunal decides that the defect was one to which the statutory warranty applied.

(5) The small claims tribunal may make an order under subsection (3)(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 date 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, do not exceed 1 month.

(6) If, after the matter is heard by a small claims tribunal, an order is made by the tribunal in the buyer's favour and the seller contravenes the order, the contravention is a ground for starting disciplinary proceedings under section 438.[130]

Applications for more than prescribed amount

294.(1) In this section—

"prescribed amount" has the meaning given by the *Small Claims Tribunals Act 1973.*

(2) This section applies to an application if—

(a) a provision of this part provides that an application may be made to a small claims tribunal; and

(b) the application seeks the payment of an amount (**"application amount"**) greater than the prescribed amount.

(3) In a provision of this part about the application—

(a) a reference to a small claims tribunal is taken to be a reference to a court having jurisdiction for the recovery of a debt equal to the

[130] Section 438 (Grounds for starting disciplinary proceeding)

application amount; and

(b) the provision applies with all necessary changes, and with any changes prescribed under the regulations, as if the small claims tribunal were the court.

PART 6—GENERAL

Registered office

295. A motor dealer's **"registered office"** is—

(a) for a motor dealer who is a principal licensee—

(i) the place the dealer specifies in the dealer's application for a motor dealer's licence as the dealer's principal place of business; or

(ii) another place notified to the chief executive by the motor dealer in the approved form as the dealer's principal place of business; and

(b) for a motor dealer who is an employed licensee—

(i) the place the dealer specifies in the dealer's application for a motor dealer's licence as the dealer's business address; or

(ii) another place notified to the chief executive by the dealer in the approved form as the dealer's business address.

Motor dealer's premises

296.(1) A motor dealer must not carry on the business of motor dealing unless the motor dealer carries on the business at a place that meets any minimum standard that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(2) For subsection (1), a regulation may make different provision for the standard according to the type of motor dealing business being conducted.

Motor dealer must notify chief executive of change in place of business etc.

297.(1) A motor dealer who is a principal licensee must notify the chief executive in the approved form of—

(a) any change in the dealer's registered office within 14 days of the change; or

(b) the closure of any place where the dealer carries on business within 14 days of the closure; or

(c) the opening of any place where the dealer carries on business within 14 days of the opening.

Maximum penalty—200 penalty units.

(2) A motor dealer who is an employed licensee must notify the chief executive in the approved form of any change in the dealer's registered office within 14 days of the change.

Maximum penalty—200 penalty units.

Publication of name of licensee

298.(1) A motor dealer who is a principal licensee must display at each place the motor dealer carries on business, in the way that may be prescribed under a regulation—

(a) the dealer's name; and

(b) if the dealer is not the person in charge of the dealer's business at the place—the name of the motor dealer who is in charge at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(2) A motor dealer must not publish in a newspaper or elsewhere an advertisement for the purpose of the dealer's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

Principal licensee to keep employment register

299.(1) A motor dealer who is a principal licensee must keep a register of employees (**"employment register"**) at each place where the licensee carries on business.

Maximum penalty—200 penalty units.

(2) The motor dealer must enter in the employment register—

(a) the name, and the other details that may be prescribed under a regulation, of each person (**"employee"**) who is employed as a motor dealer or motor salesperson at the place; and

(b) for each motor salesperson—the functions the employee is authorised to perform for the dealer during the employee's employment by the motor dealer.[131]

Maximum penalty—200 penalty units.

(3) The motor dealer must—

(a) enter the details about each employee, and, if the employee is a salesperson, the functions the salesperson is authorised to perform, immediately after the person is employed at the place; and

(b) if there is a change in an employee's details or functions—correct the entry in the way prescribed under the regulations immediately after the change happens.

Maximum penalty—200 penalty units.

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

Motor dealer to keep transactions register

300.(1) A motor dealer must keep, at the dealer's registered office, a register of transactions (**"transactions register"**).

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

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[131] The motor dealer must give the employee a statement clearly specifying the employee's functions under section 264 (Motor dealer must give salespersons "employment authority").

(2) The motor dealer must enter in the transactions register the particulars that may be prescribed under a regulation of each transaction entered into in the course of business at or through the registered office 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) In this section—

"motor dealer" means a motor dealer who is a principal licensee or a person in charge of a licensee's business at a place.

Motor dealer to obtain statement from seller of vehicle

301.(1) A motor dealer must, when buying a motor vehicle or accepting a motor vehicle for sale on consignment from a person (**"seller"**), obtain from the seller a statement, signed by the seller, stating the particulars about the seller and the vehicle that may be prescribed under a regulation.

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

(2) The motor dealer must retain 1 copy of the statement and give 1 copy to the seller.

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

(3) This section does not apply if the seller is—

(a) a financier of the business of the motor dealer; or

(b) another motor dealer.

Motor dealer to give statement to buyer of vehicle

302.(1) A motor dealer must, when selling a motor vehicle, either personally or on consignment, to a person (**"buyer"**), give to the buyer a statement, signed by the motor dealer, stating the particulars about the owner of the vehicle and the vehicle that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(2) The motor dealer must—

(a) retain 1 copy of the statement; and

(b) give 1 copy of the statement to the buyer immediately after it is signed.

Maximum penalty—200 penalty units.

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

Contract of sale

303.(1) A contract for the sale of a motor vehicle by a motor dealer must—

(a) be in writing; and

(b) contain the particulars that may be 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 that is not in writing is not enforceable against the buyer of the motor vehicle.

PART 7—OFFENCES

Acting as motor dealer

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

(a) the person holds a motor dealer's licence; and

(b) the functions performed in the carrying on of business as a motor dealer are authorised under the person's licence.

Maximum penalty—200 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 or notifies or states that the person carries on the business of motor dealing, whether generally or in relation to a single transaction; or

(b) in any way holds out as being ready to carry on the business of motor dealing, whether generally or in relation to 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.

Motor dealer must not act for more than 1 party

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

Maximum penalty—200 penalty units.

(2) If an agent accepts appointment to act for more than 1 party to a transaction, each appointment is ineffective from the beginning.

Example of subsection (2)—

Accepting appointment to act for both seller and buyer in 1 transaction.

Production of licence

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

Maximum penalty—100 penalty units.

Employment of ineligible persons in motor dealer business

307.(1) A motor dealer must not employ—

(a) as a motor salesperson—a person the motor dealer knows, or ought to know, is not eligible to be employed as a motor salesperson under section 262;[132] or

(b) in any capacity in a motor dealer's business—an ineligible person.

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

(2) Subsection (1)(b) does not apply if—

(a) the chief executive approves the person's employment in a stated capacity in writing; and

(b) the person is employed in that capacity and complies with any conditions imposed by the chief executive in the approval.

(3) A person who is employed as a motor salesperson knowing that he or she is an ineligible person commits an offence.

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

(4) A person who is employed in a capacity in a motor dealer's business knowing that he or she is not eligible to be employed in the business in that capacity commits an offence, unless—

(a) the person's employment in that capacity is approved by the chief executive; and

(b) the person complies with any conditions imposed by the chief executive in the approval.

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

(5) In this section—

"ineligible person" means a person whose name is entered in the register of ineligible persons.

Other offences about employment as motor salespersons

308.(1) 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.

[132] Section 262 (Persons not eligible for employment as motor salespersons)

Maximum penalty—200 penalty units.

(2) 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 chapter 2 of the Criminal Code of an offence or for section 529[133]—200 penalty units; or

(b) for a corporation—1 000 penalty units.

CHAPTER 8—COMMERCIAL AGENTS AND THEIR EMPLOYEES

PART 1—COMMERCIAL AGENTS

Division 1—Commercial agent's licence

What a commercial agent's licence authorises

309.(1) A commercial agent's licence authorises the holder of the licence (**"commercial agent"**) to perform the following functions as an agent for others for reward—

(a) to find, or repossess, for a person any goods or chattels that the person is entitled to repossess under an agreement;

(b) to collect, or request payment of, debts;

(c) to serve any writ, claim, application, summons or other process.

(2) A commercial agent may perform the functions in the carrying on of a business, either alone or with others, or as an employee of someone else.

133 Section 529 (Executive officers must ensure corporation complies with Act)

Division 2—Commercial agent responsible for acts and omissions of employees

Responsibility for acts and omissions of commercial agent (employee)

310.(1) A commercial agent who is a principal licensee must take reasonable steps to ensure each commercial agent (employee) employed by the agent is properly supervised, acts only within the scope of the employee's authority and complies with this Act.

(2) A commercial agent who is an employed licensee in charge of a commercial agent's business at a place must take reasonable steps to ensure each commercial agent (employee) employed at the place is properly supervised, acts only within the scope of the employee's authority and complies with this Act.

(3) A commercial agent who fails to meet the agent's obligations under subsection (1) or (2) is liable to disciplinary action under chapter 11.[134]

PART 2—COMMERCIAL AGENTS (EMPLOYEE)

Division 1—Introduction

Meaning of "commercial agent (employee)"

311.(1) A **"commercial agent (employee)"** is a person employed by a commercial agent to perform any of the functions of a commercial agent.

(2) To prevent any doubt, it is declared that a person employed by a commercial agent is not a commercial agent (employee) if the person's duties are only secretarial or clerical.

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[134] Chapter 11 (Compliance, discipline and claims against the fund)

Division 2—Provisions about employment

Persons not eligible for employment as commercial agents (employee)

312.(1) Each of the following persons is not eligible to be employed as a commercial agent (employee)—

(a) a person who has not turned 18 years;

(b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence;

(c) a person who is subject to an order of a Magistrates Court or any other court or a regulatory or disciplinary body, either within or outside Queensland, declaring the person ineligible to be employed as, or not entitled to perform the functions of, a commercial agent (employee);

(d) a person whose name is entered in the register of ineligible persons as ineligible to be employed as a commercial agent (employee);

(e) a corporation.

(2) A person must not knowingly and falsely represent to someone else that the person is eligible to be employed as a commercial agent (employee).

Maximum penalty for subsection (2)—200 penalty units or 1 year's imprisonment.

Employment as commercial agent (employee)

313. A commercial agent must not employ someone (**"proposed employee"**) as a commercial agent (employee) unless the agent has—

(a) sighted a record, not more than 1 year old, of the proposed employee's criminal history and is satisfied, after sighting the record, that the person is not ineligible under section 312(1)(b) to be employed as a commercial agent (employee); and

(b) taken reasonable action, including action to inspect the register of ineligible persons, to satisfy himself or herself that the proposed employee is eligible to be employed as a commercial agent (employee).

Maximum penalty—200 penalty units.

Commercial agent must give commercial agents (employee) "employment authority"

314.(1) Immediately after the commercial agent (employee) starts employment, the commercial agent must give the employee an employment authority.

Maximum penalty—200 penalty units.

(2) In this section—

"employment authority", for a commercial agent (employee), means a statement clearly specifying the functions of a commercial agent the employee is authorised by the agent to perform for the agent during the employee's employment by the agent.

Court may declare person as ineligible person

315.(1) A court may declare by order a person to be a person who is not eligible to be employed as a commercial agent (employee).

(2) The court may make an order under subsection (1) only if it is satisfied—

(a) the person has contravened a code of conduct made under part 3, division 4;[135] or

(b) the person has been convicted of an offence against this Act and, having regard to the nature of the offence, the court considers it is appropriate to declare the person to be a person who is not eligible to be employed as a commercial agent (employee); or

(c) the person has been convicted of an offence mentioned in section 312(1)(b).[136]

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135 Part 3 (Conduct provisions) division 4 (Code of conduct)

136 Section 312 (Persons not eligible for employment as commercial agents (employee))

(3) If an order is made under subsection (1), the person's name and the other details that may be prescribed under a regulation must be entered in the register of ineligible persons.

(4) The court may make an order subject to stated conditions and may vary or revoke the order at any time.

(5) An order may be made—

(a) on conviction of a person of an offence mentioned in subsection (2)(b) or (c)—on the prosecutor's application or by the court on its own initiative; or

(b) at any time—on the application of the chief executive.

Division 3—Functions of commercial agents (employee)

Functions of commercial agent (employee)

316. A commercial agent (employee) of a commercial agent may, as an employee of the commercial agent and subject to the person's employment authority under section 314,[137] perform the functions the commercial agent is authorised to perform under this Act.

PART 3—CONDUCT PROVISIONS

Division 1—Licensee to be in charge of a licensee's business

Carrying on of business under commercial agent's licence

317. An individual who carries on the business of a commercial agent with others is not required to hold a commercial agent's licence if—

(a) at least 1 of the persons with whom the individual carries on

[137] Section 314 (Commercial agent must give commercial agents (employee) "employment authority")

business is a commercial agent; and

(b) the individual does not perform the functions of a commercial agent; and

(c) the individual is a suitable person to hold a licence.

Licensee to be in charge of commercial agent's business at a place

318.(1) A commercial agent who is an individual and a principal licensee must—

(a) be in charge of the agent's business at the agent's registered office;[138] and

(b) if the commercial agent has more than 1 place of business—ensure that at each other place of business a commercial agent who is an individual is in charge of the agent's business at the place.

Maximum penalty—200 penalty units.

(2) A commercial agent that is a corporation and a principal licensee (**"corporate agent"**) must ensure that—

(a) the individual in charge of the corporate agent's business at its registered office is a commercial agent; and

(b) if the corporate agent has more than 1 place of business—at each other place of business an individual who is a commercial agent is in charge of the corporate agent's business at the place.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[139]—200 penalty units; or

(b) for a corporation—1 000 penalty units.

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[138] The **"registered office"** of a commercial agent who is a principal licensee is the commercial agent's principal place of business. See section 326 (Registered office).

[139] Section 529 (Executive officers must ensure corporation complies with Act)

(3) To prevent any doubt, it is declared that a commercial agent can not be in charge of a commercial agent's business at more than 1 place.

Division 2—Appointment

Appointment of commercial agent

319.(1) A commercial agent who is asked by a person (**"client"**) to perform the function of collecting, or requesting payment of, debts (**"service"**) for the client must not act for the client unless the client appoints the agent in writing.

Maximum penalty—200 penalty units.

(2) The appointment may be for the performance of—

(a) a particular service (**"single appointment"**); or

(b) a number of services over a period (**"continuing appointment"**).

(3) The appointment must—

(a) state the service to be performed by the commercial agent and how it is to be performed; and

(b) state—

(i) in the way prescribed under a regulation—that fees, charges and commission payable for the service are negotiable; and

(ii) if commission is payable and expressed as a percentage of an amount recovered—the amount of commission expressed in dollars based on the amount; and

(c) state—

(i) the fees, charges and commission payable for the services; and

(ii) the expenses, including travelling expenses, the commercial agent is authorised to incur in connection with—

(A) for a single appointment—the performance of the service; or

(B) for a continuing appointment—the performance of each service or category of service; and

(iii) any condition, limitation or restriction on the performance of the service; and

(d) state when the fees, charges and commission for the service become payable; and

(e) state any other information that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(4) A continuing appointment must state—

(a) the date the appointment ends; and

(b) that the appointment may be revoked at any time by signed writing given to the other party.

Maximum penalty—200 penalty units.

(5) Subsection (3)(b)(ii) does not apply to a continuing appointment.

(6) The appointment must be signed by the client and the commercial agent or someone authorised or apparently authorised to sign for the agent.

(7) The commercial agent must give a copy of the signed appointment to the client.

Maximum penalty—200 penalty units.

Division 3—Recovery of commission and expenses

Restriction on commission payable as a percentage

320.(1) This section applies to a commercial agent who performs a service of collecting a debt or repossessing or finding goods or a chattel for someone (**"client"**) and claims commission worked out as a percentage of the amount or value of the thing.

(2) The commercial agent must not claim commission worked out as a percentage of an amount more than the actual amount collected or value of the goods or chattel repossessed or found.

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

Restriction on remedy for commission or reward

321.(1) A person must not sue for, or recover or retain, a commission, reward or expense for the performance of a service as a commercial agent unless—

(a) at the time the service was performed—

(i) the person held a commercial agent's licence; and

(ii) the person was authorised under the person's licence to perform the service; and

(b) the person has been properly appointed under division 2[140] by the person to be charged with the commission, reward or expense.

Maximum penalty—200 penalty units.

(2) A person must not sue for, or recover or retain, a commission or reward for the performance of a service as a commercial agent that is more than—

(a) the amount of the commission, reward or expense stated in the appointment given under section 319(3);[141] or

(b) if commission rates for the performance of the function have been prescribed under a regulation—the lesser of the amount stated in the appointment for the performance of the service and the commission allowed under the regulation for the performance of the service.

Maximum penalty—200 penalty units.

(3) A person must not sue for, or recover or retain, expenses for the performance of a service as a commercial agent that are more than the lesser of the following amounts—

(a) the amount of the expenses stated in the appointment given under

140 Division 2 (Appointment)

141 Section 319 (Appointment of commercial agent)

section 319(3) and actually expended;

(b) if the amount of expenses that may be incurred in relation to the performance of the service is limited under a regulation—the amount allowed under the regulation.

Maximum penalty—200 penalty units.

(4) In this section—

"service" means collecting or requesting payment of debts.

Excess commission etc. to be repaid

322.(1) This section applies if—

(a) a person is convicted of an offence against section 320 or 321;[142] and

(b) the court before whom the person is convicted is satisfied on the balance of probabilities the person, in connection with the offence, has recovered or retained from someone (**"client"**) for whom the person performed a function 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 order may be filed in a court having jurisdiction for the recovery of a debt of an equal amount and enforced as a judgment of that court.

Recovery of costs of commercial agent

323.(1) A person must not recover or attempt to recover from a debtor the costs or expenses of a commercial agent for—

(a) collecting or attempting to collect a debt owed by the debtor; or

(b) repossessing or attempting to repossess goods or chattels from the debtor.

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[142] Section 320 (Restriction on commission payable as a percentage) or 321 (Restriction on remedy for commission or reward)

Maximum penalty—200 penalty units.

(2) Subsection (1)(b) does not apply to prevent a person who appoints a commercial agent to repossess goods or chattels from a debtor from recovering the commercial agent's costs and expenses if the person has a right under an agreement or otherwise to recover the costs or expenses.

(3) Costs or expenses recovered in contravention of subsection (1) may be recovered by the debtor as a debt in a court of competent jurisdiction.

(4) This section applies subject to the Consumer Credit Code.

(5) In this section—

"costs" do not include—

(a) stamp duty; or

(b) legal costs fixed by, or payable under, rules of court or a court order.

"debtor" includes a person from whom goods or chattels may be lawfully repossessed.

Division 4—Code of conduct

Code of conduct

324. A regulation may prescribe a code of conduct about commercial agency practice that may include the following—

(a) setting conduct standards for commercial agents and commercial agents (employee);

(b) establishing principles for fair trading;

(c) providing for a system of complaint resolution.

Complaints about conduct

325.(1) A person aggrieved by the conduct of a commercial agent or commercial agent (employee) may complain in writing to the chief executive of the conduct.

(2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action in relation to the conduct allowed under this Act.[143]

(3) The investigation may take place and action may be taken even though the person complained about is no longer a commercial agent or commercial agent (employee).

PART 4—GENERAL

Registered office

326. A commercial agent's **"registered office"** is—

(a) for a commercial agent who is a principal licensee—

(i) the place the agent specifies in the agent's application for a commercial agent's licence as the agent's principal place of business; or

(ii) another place notified to the chief executive by the agent in the approved form as the agent's principal place of business; and

(b) for a commercial agent who is an employed licensee—

(i) the place the agent specifies in the agent's application for a commercial agent's licence as the agent's business address; or

(ii) another place notified to the chief executive by the agent in the approved form as the agent's business address.

Principal licensee must notify chief executive of change in place of business etc.

327.(1) A commercial agent who is a principal licensee must notify the chief executive in the approved form of—

143 Breach of a code of conduct is a ground for starting disciplinary proceedings under section 438 (Grounds for starting disciplinary proceeding).

(a) any change in the agent's registered office within 14 days of the change; or

(b) the closure of any place where the agent carries on business within 14 days of the closure; or

(c) the opening of any place where the agent carries on business within 14 days of the opening.

Maximum penalty—200 penalty units.

(2) A commercial agent who is an employed licensee must notify the chief executive in the approved form of any change in the agent's registered office within 14 days of the change.

Maximum penalty—200 penalty units.

Publication of name of licensee

328.(1) A commercial agent who is a principal licensee must display at each place the commercial agent carries on business, in the way that may be prescribed under a regulation—

(a) the agent's name; and

(b) if the agent is not the person in charge of the agent's business at the place—the name of the commercial agent who is in charge of the agent's business at the place; and

(c) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

(2) A commercial agent must not publish in a newspaper or elsewhere an advertisement for the purpose of the agent's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

Principal licensee must keep employment register

329.(1) A commercial agent who is a principal licensee must keep a register (**"employment register"**) at each place where the licensee carries on business.

Maximum penalty—200 penalty units.

(2) The commercial agent must enter in the employment register—

(a) the name, and the other details that may be prescribed under a regulation, of each person (**"employee"**) who is employed as a commercial agent or commercial agent (employee) at the place; and

(b) for a commercial agent (employee)—the functions the employee is authorised to perform for the agent during the employee's employment by the commercial agent.[144]

Maximum penalty—200 penalty units.

(3) The commercial agent must—

(a) enter the details about each employee, and, if the employee is a commercial agent (employee), the functions the employee is authorised to perform, immediately after the person is employed at the place; and

(b) if there is a change in an employee's details or functions—correct the entry in the way prescribed under the regulations immediately after the change happens.

Maximum penalty—200 penalty units.

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

PART 5—OFFENCES

Acting as commercial agent

330.(1) A person must not, as an agent for someone else for reward, perform a function that may be done under the authority of a commercial agent's licence unless the person—

144 The commercial agent must give the employee a statement clearly specifying the employee's functions under section 314 (Commercial agent must give commercial agents (employee) "employment authority").

(a) holds a commercial agent's licence and the performance of the function is authorised under the person's licence; or

(b) is otherwise permitted under an Act to perform the function.

Maximum penalty—200 penalty units or 2 years imprisonment.

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

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

(b) the act is otherwise permitted under an Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

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

(a) performs a function mentioned in section 309(1);[145] or

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

(i) performs a function mentioned in section 309(1); or

(ii) is willing to perform a function mentioned in section 309(1); or

(c) in any way holds out as being ready to perform a function mentioned in section 309(1).

Commercial agent must not act for more than 1 party

331. A commercial agent who is appointed to perform a function for a person (**"client"**) in relation to another person must not accept appointment from the other person to perform a function while the agent continues to act for the client in relation to the other person.

Maximum penalty—200 penalty units.

145 Section 309 (What a commercial agent's licence authorises)

Production of licence

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

Maximum penalty—100 penalty units.

Employment of ineligible persons in commercial agent's business

333.(1) A commercial agent must not employ—

(a) as a commercial agent (employee)—a person the commercial agent knows, or ought to know, is not eligible to be employed as a commercial agent (employee) under section 312;[146] or

(b) in any capacity in a commercial agent's business—an ineligible person.

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

(2) Subsection (1)(b) does not apply if—

(a) the chief executive approves the person's employment in a stated capacity in writing; and

(b) the person is employed in that capacity and complies with any conditions imposed by the chief executive in the approval.

(3) A person who is employed as a commercial agent (employee) knowing that he or she is an ineligible person commits an offence.

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

(4) A person who is employed in a capacity in a commercial agent's business knowing that he or she is not eligible to be employed in the business in that capacity commits an offence, unless—

(a) the person's employment in that capacity is approved by the chief executive; and

(b) the person complies with any conditions imposed by the chief executive in the approval.

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

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[146] Section 312 (Persons not eligible for employment as commercial agents (employee))

(5) In this section—

“ineligible person” means a person whose name is entered in the register of ineligible persons.

Other offences about employment as commercial agents (employee)

334.(1) A principal licensee who is an individual and carries on the business of a commercial agent must not employ, as a commercial agent (employee) for the business, himself or herself or another individual with whom the principal licensee carries on business as a commercial agent.

Maximum penalty—200 penalty units.

(2) A principal licensee that is a corporation and carries on business as a commercial agent must not employ an executive officer of a corporation as a commercial agent (employee) for the business.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[147]—200 penalty units; or

(b) for a corporation—1 000 penalty units.

Licence not to be used improperly

335.(1) A commercial agent must not—

(a) represent that the person’s commercial agent’s licence entitles the person to exercise a power the person may not lawfully exercise; or

(b) use the person’s licence to exercise a power the person may not lawfully exercise.

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

(2) In this section—

“represent” includes suggest and imply.

“use” includes attempt to use.

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147 Section 529 (Executive officers must ensure corporation complies with Act)

Unlawful entry

336. A commercial agent must not, when performing the functions of a commercial agent, enter any premises without lawful authority.

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

Misrepresentation

337.(1) A commercial agent must not by any false or misleading representation induce a person to enter into an arrangement for the payment of a debt.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) In this section—

"induce" includes attempt to induce.

Impersonating commercial agents

338.(1) A creditor, when dealing with a person for payment of a debt, must not use any name, description, document or device intended to make the person believe that the person is not dealing directly with the creditor, but with someone acting on the creditor's behalf.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A commercial agent must not give anything to another person to enable the other person to make a third person believe that the third person is not dealing directly with the creditor, but with someone acting on the creditor's behalf.

Maximum penalty—200 penalty units or 2 years imprisonment.

CHAPTER 9—ACCOUNTS AND FUNDS

PART 1—TRUST ACCOUNTS

Division 1—Application of part 1

Pt 1 applies only to principal licensees

339. This part applies only to principal licensees.

Division 2—Opening trust accounts

Notice before opening account

340.(1) Before opening a general trust account or special trust account,[148] a licensee must give the chief executive written notice stating—

(a) the licensee's intention to open the account; and

(b) for a general trust account—the office or branch of an approved financial institution within the State where the licensee proposes to open the account; and

(c) for a special trust account—the office or branch of a financial institution within the State where the licensee proposes to open the account; and

(d) whether the account is to be a general trust account or special trust account.

Maximum penalty—200 penalty units.

(2) The chief executive must give the licensee a written acknowledgment of the notice.

(3) Before opening the account, the licensee must give the manager or other officer in charge of the institution's office or branch a copy of the

148 A special trust account is a trust account created under section 345 in which an amount is held for investment at the direction of both parties to the sale.

chief executive's acknowledgment.

Maximum penalty—200 penalty units.

Account's name

341.(1) A general trust account's name must include the words 'general trust account'.

Maximum penalty—200 penalty units.

(2) A special trust account's name must include the words 'special trust account'.

Maximum penalty—200 penalty units.

Notice of account's opening, closing or name change

342.(1) A licensee must immediately give the chief executive written notice if the licensee—

(a) opens a general trust account or special trust account; or

(b) changes the name of a general trust account or special trust account; or

(c) closes a general trust account or special trust account.

Maximum penalty—200 penalty units.

(2) The written notice must include—

(a) the name of the financial institution where the account is or was kept; and

(b) the account name; and

(c) the identifying number of the financial institution;[149] and

(d) the trust account number.

[149] This is commonly referred to as the bank state branch number.

Division 3—Dealing with trust money

Subdivision 1—Payments to trust accounts

Application of sdiv 1

343. This subdivision applies if an amount is received by a licensee—

(a) for a transaction; or

(b) with a written direction for its use.

Example of paragraph (b)—

An amount received by a real estate agent with a written direction to use it for advertising or marketing by the agent or another person.

Dealing with amount on receipt

344. A licensee must, immediately on receiving an amount—

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

(b) if section 345(1) applies—invest it under section 345(2).

Example of paragraph (a)—

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

Maximum penalty—200 penalty units or 3 years imprisonment.

Investments

345.(1) A licensee may invest an amount under subsection (2) if—

(a) the licensee receives the amount for a sale; and

(b) the sale is to be completed on a day—

(i) stated in the contract or ascertainable on the day the contract is entered into; and

(ii) more than 60 days after the amount is received; and

(c) the amount is received with a direction from all parties to the sale that it be invested.

(2) The licensee must pay the amount as required by the direction to a special trust account with a branch of a financial institution within the State operated for the investment of the amount.

Maximum penalty for subsection (2)—200 penalty units or 3 years imprisonment.

No other payments to trust account

346.(1) A licensee must not pay to a trust account an amount other than an amount that must be paid to the account under section 344 or 345.[150]

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

(2) However, if the licensee receives an amount consisting of trust money and other money (**"non-trust money"**) that can not be divided, the licensee must—

(a) pay the whole amount to the licensee's general trust account; and

(b) draw the non-trust money from the account within 14 days after the money becomes available for drawing.

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

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

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

Multiple licence holders

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

Trust money not available to licensee's creditors

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

[150] Section 344 (Dealing with amount on receipt) or 345 (Investments)

(a) used for payment of the debt of a creditor of a licensee; or

(b) attached or taken in execution under a court order or process by a creditor.

Subdivision 2—Payments from trust accounts

When payments may be made from trust accounts

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

Maximum penalty—200 penalty units or 3 years imprisonment.

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

Maximum penalty—200 penalty units or 3 years imprisonment.

Permitted drawings from trust accounts

350.(1) A licensee may draw an amount from the licensee's trust account to pay the licensee's transaction fee or transaction expenses in relation to a transaction only if—

(a) the amount is drawn against the transaction fund for the transaction; and

(b) the licensee is authorised to draw the amount under this section.

Maximum penalty—200 penalty units or 3 years imprisonment.

(2) The licensee is authorised—

(a) to draw an amount from the transaction fund to pay a transaction expense when the expense becomes payable; and

(b) when the transaction is finalised, to draw an amount from the transaction fund that is equal to the difference between—

(i) the balance of the transaction fund; and

(ii) the total of the licensee's transaction fee and any outstanding transaction expense;

to pay the person entitled to the amount or in accordance with the person's written direction; and

(c) to draw the licensee's transaction fee from the transaction fund when the amount, if any, mentioned in paragraph (b) has been paid and when the transaction is finalised.

(3) For subsection (2)(b) or (c), if a dispute about the transaction fund arises, the transaction is not taken to be finalised until the licensee is authorised to pay out the transaction fund under section 353.[151]

(4) The licensee must pay an amount mentioned in subsection (2)(b) to the person entitled to it or in accordance with the person's written direction—

(a) if the person asks, in writing, for the balance—within 14 days after receiving the request; or

(b) if the person has not asked, in writing, for the balance—within 42 days after the person first had the right to the balance.

Maximum penalty—200 penalty units or 3 years imprisonment.

(5) In this section—

"transaction expenses" means the expenses the licensee is authorised to incur in connection with the performance of the licensee's functions for a transaction.

"transaction fee" means the fees, charges and commission payable for the performance of the licensee's functions for a transaction.

"transaction fund" means the amount held in a licensee's trust account for the transaction.

Subdivision 3—Other trust account obligations

Accounting to clients

351.(1) A licensee must account to the person (**"client"**) who appoints the licensee to perform a function for all amounts received for a transaction.

[151] Section 353 (When amount in dispute may be paid)

Maximum penalty—200 penalty units or 3 years imprisonment.

(2) The account must be in writing and state—

(a) the amounts received for the transaction; and

(b) how the amounts were or are to be paid out.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) The licensee must give the client the account—

(a) if the client asks, in writing, for the account—within 14 days after receiving the request; or

(b) if the client has not asked, in writing, for the account—within 42 days after the transaction is finalised.

Maximum penalty—200 penalty units or 3 years imprisonment.

Division 4—Disputes about trust money

Application of div 4

352.(1) This division applies if—

(a) a licensee holds a transaction fund for a transaction under section 350;[152] and

(b) before the transaction fund is paid out under section 350, the licensee receives written notice from a party to the transaction that ownership of the fund or part of the fund is in dispute (the **"amount in dispute"**).

(2) In subsection (1)—

"party", to a transaction, does not include a licensee acting for a party to the transaction.

When amount in dispute may be paid

353. The licensee must not pay out the amount in dispute unless the

[152] Section 350 (Permitted drawings from trust accounts)

licensee—

(a) receives written notice—

(i) from all parties to the transaction stating the person who is entitled to the amount in dispute; or

(ii) a legal proceeding has been started to decide who is entitled to the amount in dispute; or

(b) pays the amount under section 355(3).[153]

Maximum penalty—200 penalty units or 3 years imprisonment.

Where amount must be paid if notice given

354. The licensee must pay the amount in dispute immediately—

(a) if notice under 353(a)(i) is received—to the person stated to be entitled to the amount or in accordance with the person's direction; or

(b) if notice under 353(a)(ii) is received—to the court in which the proceeding was started.

Maximum penalty—200 penalty units or 3 years imprisonment.

Dealing with amount if no notice

355.(1) This section applies if the licensee does not receive a notice under section 353[154] within 30 days after receiving notice of the dispute.

(2) The licensee must within 7 days after the end of the 30 day period give all parties to the transaction notice that—

(a) after 30 days the licensee will pay the amount in dispute to a stated person who the licensee believes is entitled to receive it if the licensee has not received a notice under section 353; or

(b) the licensee can not decide who is entitled to the amount and is keeping it in the licensee's trust account until the licensee receives

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[153] Section 355 (Dealing with amount if no notice)

[154] Section 353 (When amount in dispute may be paid)

notice under section 353.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) If the licensee gives a notice under subsection (2)(a), the licensee may pay the amount to the person stated in the notice if the licensee does not receive a notice under section 353 within 30 days.

PART 2—AUDIT REQUIREMENTS

Division 1—Interpretation

Meaning of "auditor"

356. An **"auditor"** means—

(a) generally—a person (**"qualified auditor"**) who is—

  (i) a member of the Institute of Chartered Accountants in Australia and holds a current certificate of public practice issued by the institute; or

  (ii) a member of the Australian Society of Certified Practising Accountants and holds a current certificate of public practice issued by the society; or

  (iii) a registered company auditor under the Corporations Law; or

(b) for a stated licensee—a person (**"approved auditor"**) approved by the chief executive under section 359[155] to audit the licensee's trust accounts.

[155] Section 359 (Chief executive to consider application)

Division 2—Provisions about auditors

Principal licensee must appoint auditor

357.(1) A principal licensee who is required under this Act to keep a trust account must appoint an auditor to audit the trust accounts kept or to be kept by the licensee under this Act.

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

(2) If the licensee is unable to appoint a qualified auditor to audit the licensee's trust accounts, the chief executive, at the request of the licensee, may approve another person to audit the licensee's trust accounts.

Application for approval as auditor

358.(1) A person may apply to the chief executive to be an approved auditor for a stated licensee.

(2) The application must—

- (a) be made in the approved form to the chief executive; and
- (b) establish the person's qualifications to be an approved auditor; and
- (c) be accompanied by—
  - (i) a request by the stated licensee that the person be approved as the auditor to audit the licensee's trust accounts; and
  - (ii) evidence that the person holds current professional indemnity insurance in an amount not less than the amount prescribed under a regulation.

Chief executive to consider application

359.(1) The chief executive must consider the application and approve, or refuse to approve, the person as an approved auditor for a stated licensee.

(2) The chief executive may approve the person as an approved auditor only if the chief executive is satisfied the person—

- (a) is a suitable person to be an approved auditor; and

(b) has at least a diploma level tertiary qualification in accounting with an auditing component; and

(c) holds current professional indemnity insurance in an amount not less than the amount prescribed under a regulation.

(3) The chief executive may approve a person who meets the requirements of subsections (2)(a) and (c) but does not have the minimum qualification mentioned in subsection (2)(b) if the chief executive is satisfied—

(a) the person resides in a remote locality; and

(b) the person has the necessary skills or experience and a sufficient knowledge of this Act to perform the functions of an approved auditor; and

(c) there is no qualified auditor available to serve the needs of the locality.

(4) If the chief executive refuses to approve the person as an approved auditor, the chief executive must give the person an information notice about the decision within 14 days of the decision being made.

(5) A person is not a **"suitable person"** for this section if the person—

(a) is an undischarged bankrupt; or

(b) is a person who has been convicted of an indictable offence involving dishonesty; or

(c) has been found guilty of professional misconduct or unprofessional conduct or had the person's practising certificate revoked by an entity mentioned in section 356(a)(i) or (ii).[156]

When approval of person as approved auditor ends

360. The approval of a person as an approved auditor ends if—

(a) the person's appointment to audit the trust accounts of the licensee for whom the person is the approved auditor ends; or

(b) the person is no longer a suitable person under section 359; or

156 Section 356 (Meaning of "auditor")

(c) the person no longer holds current professional indemnity insurance in an amount not less than the amount prescribed under a regulation; or

(d) the chief executive withdraws approval of the person as the approved auditor for the licensee under section 363.[157]

Notice and evidence of auditor's appointment

361.(1) This section applies if—

(a) a principal licensee appoints an auditor; and

(b) the licensee has not already advised the chief executive of the auditor's name and address under section 26.[158]

(2) The licensee must within 1 month of the appointment give the chief executive—

(a) written notice of the auditor's name and address; and

(b) evidence that the auditor has accepted the appointment.

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

Steps to be taken if auditor's appointment ends

362.(1) If a licensee's auditor resigns or the licensee ends the auditor's appointment, both the auditor and the licensee must immediately notify the chief executive of the resignation or ending of the appointment, and of the reasons for it.

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

Maximum penalty—200 penalty units.

(3) The licensee must appoint another auditor and, within 1 month after the resignation or ending of the appointment mentioned in subsection (1) takes effect, give the chief executive—

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[157] Section 363 (Chief executive may withdraw approval as approved auditor)

[158] Section 26 (Applicant intending to carry on business to advise name of auditor)

(a) written notice of the auditor's name and address; and

(b) evidence that the auditor has accepted the appointment.

Maximum penalty—200 penalty units.

(4) If a licensee's auditor dies, the licensee must—

(a) as soon as the licensee becomes aware of the death—notify the chief executive of the death; and

(b) within 1 month after becoming aware of the death, appoint another auditor and give the chief executive—

(i) written notice of the auditor's name and address; and

(ii) evidence that the auditor has accepted the appointment.

Maximum penalty—200 penalty units.

Chief executive may withdraw approval as approved auditor

363.(1) The chief executive may withdraw the approval of a person as an approved auditor if the chief executive is satisfied that the person—

(a) has not audited the licensee's trust accounts in accordance with generally accepted standards of professional competency; or

(b) has failed to detect or report material irregularities in the operation of the licensee's trust accounts; or

(c) has not properly performed the person's functions under this Act.

(2) The chief executive must give the person written notice—

(a) stating that the chief executive proposes to withdraw the person's approval as an approved auditor for a stated licensee on a ground mentioned in subsection (1); and

(b) outlining the facts and circumstances forming the basis for the ground; and

(c) inviting the person to show, within a stated time of at least 21 days, why the approval should not be withdrawn.

(3) If the chief executive still considers the ground exists after considering any written representations within the stated time, the chief executive must—

(a) withdraw the person's approval; and

(b) give an information notice to the person and the licensee for whom the person is the approved auditor.

Chief executive may make information available to supervisory bodies

364.(1) The chief executive may report a matter about a qualified auditor to the Australian Securities Commission or an entity mentioned in section 356(a)(i) or (ii)[159] of which the auditor is a member if the chief executive believes, on reasonable grounds, that the auditor—

(a) has not audited a licensee's trust accounts in accordance with generally accepted standards of professional competency; or

(b) has failed to detect or report material irregularities in the operation of a licensee's trust accounts; or

(c) has not properly performed the auditors's functions under this Act.

(2) The chief executive may make any information in the chief executive's possession available to the commission or entity for the purposes of any investigation conducted by the commission or entity.

Division 3—Audit of trust accounts

Definitions for div 3

365. In this division—

"audit month", for a licensee's licence, means—

(a) the eighth month after the month in which the licence was first issued to the licensee and the same month in each subsequent year; or

(b) another month specified by the chief executive by written notice given to the licensee.

159 Section 356 (Meaning of "auditor")

Example of paragraph (a)—

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

"audit period" means—

(a) the 12 month period in each year ending on the last day of the audit month; or

(b) another period decided by the chief executive, either generally, by gazette notice, or by written notice given to a licensee.

"audit report", for a licensee, means a report from the licensee's auditor under section 372(2).[160]

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

What trust accounts must be audited

366.(1) A licensee's trust accounts must be audited for each audit period for which the licensee carried on business as a licensee and operated a trust account.

(2) A licensee's trust accounts need not be audited for an audit period if the licensee gives the chief executive a statutory declaration that the licensee did not operate a trust account during the period.

Time for audit

367.(1) This section applies to each audit period for which a licensee's trust accounts must be audited.

(2) The licensee must, within 4 months after the last day of the audit month in each year or the extended period allowed by the chief executive under subsection (3)—

(a) have the licensee's trust accounts for the last audit period audited by the licensee's auditor; and

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160 Section 372 (Audit reports)

(b) file the auditor's signed original audit report[161] with the chief executive.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) The chief executive may extend the time mentioned in subsection (2) if an auditor or licensee applies in writing to the chief executive.

(4) An application must state the grounds on which the extension is sought.

(5) If a licensee is charged with an offence relating to a failure to file an audit report, it is immaterial that the contravention happened without the licensee's authority or contrary to the licensee's instructions.

Auditors—functions

368.(1) An auditor has the following functions under this division—

(a) to inspect and audit, in each audit period, the trust accounts of each licensee by whom the auditor is engaged;

(b) to make an audit report for the licensee for the audit period;

(c) if the licensee is a licensee for the whole of the audit period—to make 2 unannounced examinations of the licensee's trust accounts during the audit period;

(d) if the licensee is a licensee for less than the whole audit period, but more than 6 months of the period—to make 1 unannounced examination of the licensee's trust accounts during the audit period.

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

Auditor's advice to chief executive

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

[161] The auditor must give the licensee a signed original audit report under section 372 (Audit reports).

(a) can not report that a trust account has been satisfactorily kept under this Act; or

(b) finds, on an unannounced examination of a licensee's trust accounts, an irregularity in relation to an account that ought to be brought to the chief executive's notice.

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

Auditor may ask licensee to produce other accounts

370.(1) This section applies if an auditor considers, to enable the auditor to decide whether a licensee's trust accounts have been satisfactorily kept under this Act, it is necessary—

(a) to examine a general account of the licensee; or

(b) to be given information about the accounts.

(2) The auditor may ask the licensee to produce the general account or give the information.

(3) If the licensee refuses, the auditor must immediately give written notice to the chief executive.

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

Audit on ceasing to be licensee or carrying on business

371.(1) This section applies if—

(a) a licensee must keep trust accounts; and

(b) the licensee stops being a principal licensee.

(2) The licensee must, within 2 months after the licensee stops being a principal licensee—

(a) have the licensee's trust accounts audited by the licensee's auditor for the period—

(i) starting on the day immediately after the end of the period covered by the last audit of the trust accounts or, if the trusts accounts have not previously been audited, the day on which the licensee was first required to keep trust accounts; and

(ii) ending on the day the licensee stops being a principal licensee; and

(b) file the auditor's signed original audit report with the chief executive.

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

Audit reports

372.(1) An auditor who audits a licensee's trust accounts must give the licensee an original signed audit report.

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

(2) The auditor must include the following in the report—

(a) the audit period for which the report is made;

(b) the name and number of each trust account;

(c) the name of the financial institution, the office or branch of the institution where each trust account was kept and the identifying number of the office or branch;

(d) the licensee's name and—

(i) if the licensee was a corporation—the name of each of its licensed directors during the audit period; and

(ii) if the licensee carried on business under a registered business name—the business name and the names of any persons with whom the licensee carried on the business;

(e) each place where the licensee carried on business;

(f) a statement about whether each trust account has been satisfactorily kept under this Act;

(g) a statement specifying the day and result of each unannounced examination for the audit period under section 368(1);[162]

[162] Section 368 (Auditors—functions)

(h) a statement about whether the auditor has audited the licensee's general account;

(i) a statement about whether any trust account has been overdrawn;

(j) a statement about whether a trust creditor's ledger account has been overdrawn;

(k) a statement about whether for each month during the audit period—

  (i) each trust account cash book was reconciled with the bank balance and trust ledger; and

  (ii) an analysis was made showing the name of each person for whom an amount was held and the amount held for each person;

(l) the serial numbers of the trust receipts used during the audit period and the unused trust receipts produced to the auditor;

(m) particulars of the amounts held in trust for more than 3 months by the licensee at the last day of the audit period;

(n) a statement that each trust account cash book has been reconciled with the bank balance of the trust account at the last day of the audit period;

(o) a statement about anything else about any trust account the auditor considers should be reported to the chief executive.

PART 3—FIDELITY GUARANTEE FUND

Fidelity guarantee fund

373.(1) The fidelity guarantee fund (the **"fund"**) is established.

(2) The fund consists of—

(a) fund contributions and levies on licensees under this Act; and

(b) interest from the investment of the fund; and

(c) other amounts that may be paid to the fund.

(3) The fund forms part of the trust and special funds established under the *Financial Administration and Audit Act 1977*.

How fund may be applied

374.(1) The following amounts are payable from the fund—

(a) the amount of all claims allowed against the fund;

(b) the legal costs of the chief executive or an agents and motor dealers board in performing functions under this Act;

(c) costs of an appeal under chapter 15[163] ordered against the chief executive or an agents and motor dealers board;

(d) the costs and expenses of an agents and motor dealers board;

(e) the costs of an inquiry the chief executive may carry out or authorise for this Act;

(f) refunds of contributions made by licensees or their personal representatives;

(g) other amounts payable from the fund under this Act.

(2) The Treasurer may transfer an amount from the fund to the consolidated fund if the Minister decides the amount is to be applied—

(a) to pay the costs of administering this Act, including the remuneration of the department's public service employees; or

(b) to fund—

(i) vocational education and training and scholarship programs, for licensees or their employees; or

(ii) community education programs about the business operations of the persons mentioned in subparagraph (i); or

(iii) housing assistance programs; or

(iv) a program that, in the Minister's opinion, helps the administration of this Act.

(3) However, an amount may be transferred from the fund only if the

163 Chapter 15 (Appeals)

Minister is satisfied that on the transfer the fund, after allowing for all known liabilities, will be more than $5 000 000 or a higher amount prescribed under a regulation.

(4) An amount transferred to the consolidated fund must be applied under subsection (2).

Additional levy

375.(1) This section applies if the chief executive considers the amount in the fund is not enough to pay the amounts payable from the fund.

(2) The chief executive may, with the Minister's approval, impose on each licensee who is liable to contribute to the fund an additional levy not more than the amount prescribed under a regulation.

(3) The levy must not be imposed more than once each year on each licence held by a licensee.

(4) The chief executive must notify the imposition of the levy by gazette notice.

(5) The levy is payable by the day and in the way stated in the gazette notice.

(6) However, the chief executive may extend the time mentioned in subsection (5) to pay the whole or part of the levy if the licensee applies in writing to the chief executive.

(7) An application must state the grounds on which the extension is sought.

(8) If a licensee does not pay the levy in the way or within the time stated in the gazette notice or within the further time allowed by the chief executive, the chief executive may recover it as a debt in a court of competent jurisdiction.

(9) A licensee is not taken to be unlicensed merely because the licensee has not paid the levy.

Agreements with financial institutions

376.(1) The chief executive may enter into an agreement for the State with a financial institution about the keeping of general trust accounts by licensees.

(2) The chief executive may enter into an agreement only if—

(a) the Minister approves the chief executive entering into the agreement; and

(b) the financial institution is prescribed under a regulation as a financial institution to which this section applies.

(3) The agreement may provide for the following things—

(a) payment of interest on the whole or part of amounts held in licensees' general trust accounts to the fund;

(b) informing the chief executive of amounts held in licensees' general trust accounts;

(c) auditing licensees' general trust accounts;

(d) other things concerning licensees' general trust accounts.

(4) A financial institution may pay interest to the fund under an agreement.

Interest on amounts in the fund

377.(1) The Treasurer must pay interest on amounts in the fund.

(2) Interest must be calculated on the minimum daily balance at a rate fixed by the Treasurer not less than the minimum rate that may be prescribed under a regulation.

PART 4—FREEZING TRUST ACCOUNTS AND APPOINTING RECEIVERS AND SPECIAL INVESTIGATORS

Division 1—Definitions

Definitions for pt 4

378. In this part—

"account" means—

(a) a trust account in a licensee's name with a financial institution; or

(b) an account in the licensee's name or in which the licensee has an interest with a financial institution; or

(c) another account to which trust money is deposited.

"defalcation" means stealing, embezzlement, omitting to account, misappropriation or misapplication, or other act about property punishable by imprisonment.

"holder", of an account, means the licensee or other person authorised to operate on the account.

"licensee" includes a former licensee and the personal representative of a deceased licensee.

"money" includes—

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

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

"property", for a licensee, means—

(a) trust property received by the licensee that has not been given to the person entitled to it or someone else under the person's direction or according to law; or

(b) property that, except for the appointment of a receiver, would be receivable for another person by the licensee after the receiver's appointment; or

(c) computer hardware, software and discs, ledgers, books of account, vouchers, records, deeds, files and other documents.

"receivership property", for a receiver, see section 387(2).[164]

"trust money" includes an amount that was, or ought, under this Act, to have been, deposited in a trust account required to be kept by a licensee.

Division 2—Freezing licensees' accounts

Chief executive may freeze licensee's accounts in particular cases

379.(1) The chief executive may give a direction under subsection (2) if it appears to the chief executive that any of the following persons has, or may have, stolen or misappropriated or misapplied trust money—

(a) a licensee;

(b) the person in charge of a licensee's business at a place;

(c) an employee of a licensee.

(2) The chief executive may direct, by signed writing, that—

(a) if a claim has been made against the fund concerning the trust money—all or part of the amount to the credit of a stated account be paid to the chief executive; or

(b) an amount must not be drawn from a stated account other than with the chief executive's written approval; or

(c) a stated account may be operated only under stated conditions.

(3) The direction must—

(a) be given to each holder of the account and the financial institution where the account is kept; and

(b) state the account to which it relates; and

(c) if it is a direction under subsection (2)(c)—state the conditions

164 Section 387 (How receivers are appointed)

under which the account may be operated.

(4) If an amount is paid to the chief executive under subsection (2)(a), the chief executive must pay the amount to the fund.

Financial institution must comply with direction

380.(1) After the direction has been given to a financial institution, and until it is withdrawn, the financial institution must not—

(a) pay a cheque or other instrument drawn on the account stated in the direction unless the cheque or instrument is also signed by the chief executive; or

(b) give effect to another transaction on the account that is not authorised because of the direction.

Maximum penalty—

(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 529[165]—200 penalty units or 1 year's imprisonment; or

(b) for a corporation—1 000 penalty units.

(2) Subsection (1) applies whether or not a copy of the direction has been given to anyone else.

(3) For section 379(2)(b), the chief executive's signature on the cheque or other instrument is sufficient evidence of the chief executive's approval to draw an amount from the account to honour the cheque or other instrument.

(4) A manager or principal officer in charge of an office or branch of the financial institution where the account is kept, or another officer of the financial institution, must not knowingly contravene this section.

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

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

165 Section 529 (Executive officers must ensure corporation complies with Act)

Account not to be operated unless chief executive allows

381. After the direction has been given to the holder of an account, and until it is withdrawn, the holder must not sign a cheque or other instrument drawn on an account stated in the direction unless the cheque or other instrument has first been signed by the chief executive or a person authorised by the chief executive to sign the cheque or instrument.

Maximum penalty—200 penalty units or 2 years imprisonment.

Chief executive may operate account

382.(1) This section applies if a holder of an account is unwilling to operate an account stated in a direction under section 379.[166]

(2) The chief executive or a person authorised in writing by the chief executive (**"authorised person"**) may operate on the account.

(3) A statutory declaration made by the chief executive or authorised person to the effect that the account holder is unwilling to operate on the account is sufficient evidence to the licensee's financial institution of that fact.

Withdrawal of direction

383.(1) The chief executive may withdraw a direction given under section 379[167] at any time.

(2) If the direction is withdrawn, the chief executive must immediately give all persons who were given the direction a notice that the direction has been withdrawn.

(3) A direction stops having effect when it is withdrawn.

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[166] Section 379 (Chief executive may freeze licensee's accounts in certain cases)

[167] Section 379 (Chief executive may freeze licensee's accounts in certain cases)

Division 3—Receivers

Subdivision 1—Appointment

When receiver may be appointed

384.(1) If the chief executive believes a defalcation has, or may have, been committed in relation to a licensee's trust account, the chief executive may appoint a receiver if—

(a) the licensee consents to the appointment; or

(b) the chief executive—

(i) gives the licensee written notice—

(A) stating that the chief executive proposes to appoint a receiver on the ground that a defalcation has, or may have, been committed in relation to the licensee's trust account; and

(B) outlining the facts and circumstances forming the basis for the ground; and

(C) inviting the licensee to show, within a stated time of at least 21 days, why the appointment should not be made; and

(ii) after considering any written representations given within the stated time, still considers the ground exists.[168]

(2) The chief executive may immediately appoint a receiver if the chief executive believes a person can not obtain payment or delivery of property held for the person by a licensee because of—

(a) the licensee's mental or physical infirmity; or

(b) the licensee's death; or

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

(c) the abandonment of the licensee's business; or

(d) the licensee's disqualification from holding a licence; or

(e) the cancellation of the licensee's licence; or

(f) a refusal to renew the licensee's licence; or

(g) the lapse of the licensee's licence.

Property receiver may be appointed over

385. A receiver may be appointed over property—

(a) held by a licensee; or

(b) held by another person for a licensee; or

(c) recoverable by a licensee; or

(d) if a licensee is dead—that may be recoverable by the licensee's personal representative.

Who may be appointed

386.(1) The chief executive may appoint a person as a receiver only if satisfied the person is appropriately qualified to perform a receiver's functions.

(2) A person may be appointed as a receiver and a special investigator[169] over the same property.

How receivers are appointed

387.(1) The chief executive must appoint a receiver by signed notice.

(2) The notice must state the property (**"receivership property"**) over which the receiver is appointed.

(3) The appointment takes effect when the notice is signed.

(4) The chief executive must give a copy of the notice to the licensee and the receiver as soon as practicable after the signing of the notice.

[169] See section 410 (Appointment of special investigator)

Subdivision 2—Receiver's functions and powers

Receivers—functions

388. A receiver appointed under this division has the following functions—

(a) to take possession of receivership property;

(b) to manage receivership property;

(c) to receive claims against receivership property;

(d) if the licensee held receivership property in trust—

(i) to identify the person or persons who have the right to it; and

(ii) to distribute it under this division;

(e) to identify any defalcation that has, or may have, been committed;

(f) to report to the chief executive about a receivership.

Requiring information

389.(1) A receiver may ask a person to give the receiver information the receiver reasonably requires about receivership property.

(2) A person must give the receiver the information, unless the person has a reasonable excuse.

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

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

Possession of receivership property

390.(1) A receiver may take or enter into possession of receivership property.

(2) As soon as practicable after taking or entering into possession of receivership property, the receiver must give a receipt for it to the person from whom the property was taken or who held possession of the property.

(3) The receiver must allow a person who would be entitled to the receivership property if it were not in the receiver's possession—

(a) to inspect it; or

(b) if it is a document—to take a copy of it.

(4) The receiver must return property that the receiver is satisfied is not required for the receivership to the licensee or other person who has the right to it.

(5) The receiver may take or enter into possession of property under subsection (1) despite a lien or other security over it claimed by any person.

(6) However, the taking of or entry into possession does not affect the person's claim to the lien or other security against a person other than the receiver.

Orders for possession of receivership property

391.(1) This section applies if—

(a) a receiver requires a person in possession of receivership property to give possession of it to the receiver; and

(b) the person does not comply with the requirement.

(2) The receiver may apply to a court having jurisdiction for the recovery of debts up to the amount or value of the property concerned for an order for possession of the property.

Enforcing orders

392.(1) This section applies if—

(a) a court makes an order for possession of property against a person; and

(b) the person has been given a copy of the order; and

(c) the person has not complied with the order.

(2) The court may make an order authorising a police officer, or the receiver or another person and a police officer—

(a) to enter stated premises or another place occupied by the person and search for the property; and

(b) to seize the property and move it to a place the receiver considers appropriate.

(3) The court may also make another order it considers appropriate.

Improperly withdrawing, destroying or concealing property

393. A person must not—

(a) withdraw an amount or make a payment from an account with intent to defeat a receiver's functions; or

(b) destroy, conceal, move from 1 place to another place, give to another or place under another's control property over which a receiver has been appointed.

Maximum penalty—200 penalty units or 2 years imprisonment.

Dealing with receivership property

394.(1) A receiver may deal with receivership property in the same way as the licensee may have dealt with the property.

(2) Without limiting subsection (1), the receiver may do the following—

(a) if the licensee had no general trust account—open a general trust account;

(b) claim or receive a debt owing to the licensee in connection with the property;

(c) start or defend a proceeding concerning the property on the licensee's behalf;

(d) engage a legal representative or other agent to give advice;

(e) engage employees or agents to assist the receiver in carrying out the receiver's functions;

(f) if the licensee had power to sell or require the sale of the property—sell or require the sale of the property.

Obstructing receivers

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

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

Subdivision 3—Distributing receivership property

Notice to claimants against receivership property

396.(1) The receiver must give notice to persons who may have a claim against receivership property.

(2) The notice may be given—

(a) by post; or

(b) by newspaper advertisement; or

(c) in another way the receiver thinks will reasonably bring the notice to the attention of persons who may have a claim to the property.

(3) A notice must state a time, at least 1 month after the notice is given, for particulars and grounds of a claim against the property to be given to the receiver.

Access to documents

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

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

Deciding claims

398.(1) The receiver must consider all claims against receivership property and decide whether each claim is allowable.

(2) The receiver may refuse to allow the person's claim against the property if—

(a) the person was given notice under section 396;[170] and

(b) particulars and grounds of the claim were not given within the time stated in the notice.

(3) The receiver must refuse to allow a person's claim against the property if the receiver is satisfied that the person does not have a lawful claim against the property.

(4) If the receiver refuses a claim under subsection (2) or (3), the receiver must give the person written notice of the refusal.

Payment of claims

399.(1) This section applies if—

(a) a receiver has given notice under section 396(1);[171] and

(b) the time for giving particulars and grounds of claims has ended; and

(c) the receiver has considered the claims against receivership property.

(2) The receiver may pay a claim allowed by the receiver only if the property is enough to pay all claims allowed by the receiver.

(3) If the property is not enough to pay all of the allowed claims—

(a) the receiver may pay any part of the property that consists of money to the chief executive; and

(b) must give a report to the chief executive—

(i) stating that the receiver can not pay all of the claims allowed by the receiver; and

(ii) identifying the claims against the property that the receiver considers should be paid from the fund.

(4) Money paid to the chief executive under subsection (3) must be—

(a) paid to the fund; and

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170 Section 396 (Notice to claimants against receivership property)

171 Section 396 (Notice to claimants against receivership property)

(b) paid from the fund under section 400(3)(b).

(5) In this section—

"claim" does not include a claim by the licensee.

Money not dealt with by receiver

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

(2) The receiver must give the money to the chief executive if—

(a) the receiver has not dealt with it under this division; and

(b) the chief executive asks for it.

(3) Money given to the chief executive under subsection (2) must be paid to the fund and be paid from the fund in the following order—

(a) to reimburse claims paid from the fund in relation to the licensee;

(b) to pay unsatisfied claims against the fund in relation to the licensee;

(c) to pay to the receiver the amounts payable from the fund under sections 401 and 402;

(d) to pay claims by the licensee against the money.

Subdivision 4—Receivers' remuneration and costs

Remuneration and costs

401.(1) The chief executive must pay the following to the receiver from the fund—

(a) remuneration for the receiver's services;

(b) costs incurred by the receiver in the course of the receivership.

(2) The remuneration and costs under subsection (1) include the receiver's remuneration and costs for giving access to documents under section 397.[172]

(3) If the chief executive and the receiver can not agree on the amount of the receiver's remuneration and costs, the Minister may, on the chief executive's or receiver's application, decide the amount.

Receiver's liabilities may be paid from the fund

402.(1) This section applies if the receiver is or may be liable for an act or omission done in good faith in the performance of the receiver's functions or the exercise of the receiver's powers.

(2) The chief executive may reimburse the receiver from the fund for costs, charges or damages the receiver incurs or may incur in relation to the liability.

Recovery of remuneration, costs or liabilities

403.(1) The following persons are jointly and severally liable to reimburse the fund for an amount paid under section 401 or 402[173]—

(a) the licensee;

(b) if the licensee is a corporation—the executive officers of the corporation when the event in relation to which the chief executive appointed the receiver happened.

(2) The chief executive may recover an amount liable to be reimbursed under subsection (1) as a debt in a court of competent jurisdiction.

(3) The chief executive must pay an amount the chief executive recovers under this section to the fund.

Court may review remuneration, costs or liability

404.(1) This section applies if—

(a) a person is or may become liable to reimburse, or has

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172 Section 397 (Access to documents)

173 Section 401 (Remuneration and costs) or 402 (Receiver's liabilities may be paid from the fund)

reimbursed, the fund for an amount paid under section 401 or 402;[174] and

(b) the person satisfies a court in which proceedings to recover the amount are taken or another court of competent jurisdiction that the amount was excessive.

(2) The court may—

(a) take an account between the chief executive and the receiver; and

(b) fix the amount fairly payable under section 401 or 402; and

(c) relieve the person from being liable to pay or from having paid more than the amount fixed under paragraph (b).

(3) A proceeding to obtain relief under this section must be started within 3 months after the person is given notice of the person's liability to reimburse the amount.

(4) However—

(a) if the person is deceased—the person's personal representative may start a proceeding for relief within 12 months after notice of the person's liability to reimburse the amount is given; or

(b) if the person dies within the 3 month period—the person's personal representative may start a proceeding for relief within 12 months after the date of the person's death.

Subdivision 5—Ending receivership

Ending receiver's appointment

405. A receiver's appointment ends if—

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

(b) the receiver or licensee applies to the chief executive to end the appointment and the chief executive approves the application; or

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[174] Section 401 (Remuneration and costs) or 402 (Receiver's liabilities may be paid from the fund)

(c) the receiver dies; or

(d) the chief executive ends the appointment by signed notice given to the receiver.

Dealing with receivership property when appointment ends

406.(1) This section applies to receivership property if—

(a) the receiver's appointment ends; and

(b) the chief executive has not asked for the property under section 400.[175]

(2) If, within 14 days after the end of the receiver's appointment, the chief executive appoints another person (**"new receiver"**)[176] to be the receiver in the former receiver's place, the former receiver must—

(a) give the property to the new receiver as soon as reasonably practicable; or

(b) if the chief executive gives the former receiver a direction about how to deal with the property—comply with the direction.

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

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

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

(4) However, the chief executive may direct the former receiver to destroy or give to the chief executive any part of the property consisting of documents if the documents have not been given to the person entitled to them.

(5) The former receiver must comply with a direction under subsection (4).

[175] Section 400 (Money not dealt with by receiver)

[176] For the chief executive's power to appoint a new receiver, see the *Acts Interpretation Act 1954,* section 25 (Powers of appointment imply certain incidental powers).

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

Returns by receiver

407.(1) A receiver must give the chief executive a report about the receivership when the chief executive directs.

(2) The receiver must also give the chief executive a report when the receiver's appointment ends.

(3) The report must contain the information reasonably required by the chief executive.

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

Subdivision 6—Miscellaneous

Receiver not personal representative

408. To prevent any doubt, a receiver of a deceased licensee, in performing the receiver's functions, is not to be taken to be the licensee's personal representative.

Receivership property free from execution or attachment

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

Division 4—Special investigators

Appointment of special investigator

410.(1) The chief executive may by written notice appoint a special investigator over a licensee's trust account if the chief executive considers the trust account has not been kept as required under this Act.

(2) The notice must state—

(a) the licensee's name and the trust account; and

(b) the terms on which the special investigator is appointed; and

(c) the special investigator's functions and powers.

(3) A copy of the notice must be given to the licensee.

(4) The chief executive may appoint a person as a special investigator only if the chief executive is satisfied the person is appropriately qualified to perform a special investigator's functions.

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

Special investigators—functions

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

(a) inspecting the licensee's trust accounts and records that relate to the trust accounts;

(b) preparing or constructing incomplete trust account records;

(c) performing other accounting tasks to establish the state of the trust account;

(d) reporting to the chief executive under section 414;[177]

(e) another function that may be prescribed under a regulation.

Special investigators—powers

412.(1) The chief executive may, by signed notice, give a special investigator any or all of an inspector's powers under chapter 12, part 2.[178]

(2) A special investigator's powers under subsection (1) end when the special investigator's appointment ends.

177 Section 414 (Reports to chief executive)

178 Chapter 12 (Enforcement), part 2 (Inspectors' powers)

Licensee must comply with special investigator's lawful requests

413.(1) The licensee must comply with a special investigator's lawful requests, unless the licensee has a reasonable excuse.

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

(2) The special investigator must advise the chief executive of any failure by the licensee to comply with a request.

Reports to chief executive

414.(1) A special investigator must report to the chief executive at the time, and in the way, required by the chief executive.

(2) However, if the special investigator considers sufficient grounds exist to appoint a receiver, the special investigator must advise the chief executive immediately of the grounds.

Remuneration and costs

415.(1) A special investigator has the right to the remuneration and costs provided for in the special investigator's notice of appointment.

(2) The remuneration and costs must be paid from the fund.

(3) Subsection (1) does not apply to a special investigator who is an inspector.

Special investigator's liabilities may be paid from the fund

416.(1) This section applies if the special investigator is or may be liable for an act or omission done in good faith in the performance of the special investigator's functions or the exercise of the receiver's powers.

(2) The chief executive may reimburse the special investigator out of the fund for costs, charges or damages the special investigator incurs or may incur in relation to the liability.

Recovery of remuneration, costs or liabilities

417.(1) The following persons are jointly and severally liable to reimburse the fund for any amount paid under section 415 or 416[179]—

(a) the licensee;

(b) if the licensee is a corporation—the executive officers of the corporation when the event in relation to which the chief executive appointed the special investigator happened.

(2) The chief executive may recover an amount liable to be reimbursed under subsection (1) as a debt in a court of competent jurisdiction.

(3) The chief executive must pay an amount the chief executive recovers under this section to the fund.

Court may review remuneration, costs or liabilities

418.(1) This section applies if—

(a) a person is or may become liable to reimburse, or has reimbursed, the fund for an amount paid under section 415 or 416;[180] and

(b) the person satisfies a court in which proceedings to recover the amount are taken or another court of competent jurisdiction that the amount was excessive.

(2) The court may—

(a) take an account between the chief executive and the special investigator; and

(b) fix the amount fairly payable under section 415 or 416; and

(c) relieve the person from being liable to pay or from having paid more than the amount fixed under paragraph (b).

(3) A proceeding to obtain relief under this section must be started within 3 months after the person is given notice of the person's liability to reimburse the fund.

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179 Section 415 (Remuneration and costs) or 416 (Special investigator's liabilities may be paid from the fund)

180 Section 415 (Remuneration and costs) or 416 (Special investigator's liabilities may be paid from the fund)

(4) However—

(a) if the person is deceased—the person's personal representative may start a proceeding for relief within 12 months after notice of the person's liability to reimburse the amount is given; or

(b) if the person dies within the 3 month period—the person's personal representative may start a proceeding for relief within 12 months after the date of the person's death.

Ending special investigator's appointment

419. A special investigator's appointment ends if—

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

(b) the investigator dies; or

(c) the investigator's notice of appointment states the appointment ends when an event happens and the event happens; or

(d) the chief executive ends the appointment by signed notice given to the investigator.

CHAPTER 10—AGENTS AND MOTOR DEALERS BOARD

PART 1—AGENTS AND MOTOR DEALERS BOARD PANEL AND MEMBERS

Appointment of agents and motor dealers board panel members

420.(1) The Governor in Council may, by gazette notice, appoint individuals as members of a panel of agents and motor dealers board members (the **"agents and motor dealers board's panel"**).

(2) The agents and motor dealers board's panel is to consist of the following panel members—

(a) at least 2 members who are restricted letting agents;

(b) at least 2 members who are real estate agents;

(c) at least 2 members who, in the Minister's opinion, represent pastoral house interests;

(d) at least 2 members who are auctioneers;

(e) at least 2 members who are motor dealers;

(f) at least 2 members who are commercial agents;

(g) at least 2 members who are lawyers;

(h) at least 2 members who, in the Minister's opinion, represent consumer interests.

(3) A member may be a public service officer, other than the chief executive or a public service officer involved in the administration of this Act, if the officer is appropriately qualified.

Duration of appointment

421.(1) A panel member may be appointed for a term of not more than 3 years.

(2) Appointment as a panel member is on a part-time basis.

(3) A panel member may resign by signed notice of resignation given to the Minister.

Conditions of appointment

422.(1) A panel member is to be paid from the fund the remuneration and allowances decided by the Governor in Council for acting as a member of an agents and motor dealers board.

(2) A panel member holds office on the conditions not provided in this Act decided by the Governor in Council.

Removal from office

423. The Governor in Council may, by written notice given to a panel member, remove the member from office if the member—

(a) is incapable of properly discharging the functions of a panel member; or

(b) is unfit to hold the office.

PART 2—ESTABLISHMENT AND COMPOSITION OF AGENTS AND MOTOR DEALERS BOARDS

Registrar to establish agents and motor dealers board

424.(1) The registrar may establish an agents and motor dealers board to deal with matters within the jurisdiction of agents and motor dealers boards.

(2) An agents and motor dealers board must consist of 3 panel members.

PART 3—JURISDICTION

Jurisdiction

425.(1) An agents and motor dealers board, other than a board that includes as a member a pastoral house representative, has jurisdiction—

(a) to review fees chargeable by licensees; and

(b) to hear and decide disciplinary matters involving licensees; and

(c) to hear and decide claims against the fund.

(2) An agents and motor dealers board established to advise the Minister on any matter referred for advice by the Minister may include a pastoral house representative.

PART 4—GENERAL

Minister may refer matter to agents and motor dealers board for advice

426. The Minister may refer a matter to an agents and motor dealers board for advice.

Conflicts of interest

427.(1) This section applies if a panel member has a direct or indirect interest in a matter being, or to be, considered by an agents and motor dealers board of which the panel member is a member that conflicts or may conflict with the discharge of the member's duties in considering the matter.

(2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest and conflict to—

(a) if the matter is a matter referred to the board for advice by the Minister—the Minister; or

(b) if the matter is about a claim against the fund, or a fee review proceeding or disciplinary proceeding—the registrar.

(3) Unless the Minister or, if subsection (2)(b) applies, the registrar decides otherwise, the member—

(a) must not be present during the board's deliberation of the matter; and

(b) must not take part in the board's decision on the matter.

Judicial notice of agents and motor dealers board and its members

428. Every court must take judicial notice of—

(a) the appointment of a panel member of the agents and motor dealers board's panel; and

(b) the signature of a panel member if it appears on a document issued by an agents and motor dealers board.

Registrar

429.(1) The chief executive may appoint a registrar of agents and motor dealers boards for this Act.

(2) The registrar is to be employed under the *Public Service Act 1996*.

(3) The office of registrar may be held in conjunction with any other office in the public service.

Department to provide administrative support

430.(1) The department must provide the administrative support services that the department considers appropriate to allow an agents and motor dealers board to exercise the board's jurisdiction effectively and efficiently.

(2) The cost of providing the services is payable from the fund.

CHAPTER 11—COMPLIANCE, DISCIPLINE AND CLAIMS AGAINST THE FUND

PART 1—FEE REVIEW PROCEEDINGS

Division 1—Preliminary

Definitions for pt 1

431. In this part—

"fee" includes commission, expense, gain and other remuneration.

"licensee" includes a former licensee.

Giving objection about fees to chief executive

432.(1) This section applies to a person who has appointed a licensee to perform a function for the person and considers that the fee charged or chargeable by the licensee for the performance of the function is excessive.

(2) The person may give the chief executive a written objection to the fee after the person has attempted unsuccessfully to resolve the matter with the licensee.

(3) The objection must state—

(a) the purpose for which the licensee was appointed; and

(b) the functions performed or to be performed by the licensee; and

(c) the fee charged or chargeable for the performance of the functions; and

(d) the reasons why the person considers the fee is excessive; and

(e) the action the person has taken in the unsuccessful attempt to resolve the matter with the licensee.

(4) The person must give the objection and a copy of any material relevant to the objection including, for example, the notice of appointment of the licensee to the chief executive not later than 30 days after the accounting under section 351[181] has been provided to the person.

(5) The chief executive may extend the time for giving the objection under subsection (4) if the chief executive is satisfied that the person has good reason for not giving the objection within the time allowed and the licensee will not be unfairly prejudiced by the extension of time.

Division 2—Starting fee review proceedings

Ground for starting fee review proceedings

433. The following is a ground for starting a fee review proceeding against a licensee—

(a) the chief executive has received an objection under section 432; and

(b) the chief executive is satisfied—

(i) the fee charged or chargeable by a licensee may be

[181] Section 351 (Accounting to clients)

excessive; and

(ii) the question of whether the fee is excessive should be decided by an agents and motor dealers board.

How to start proceedings

434.(1) A fee review proceeding against a licensee is started by the chief executive by filing with the registrar a notice (**“complaint”**) stating—

(a) the nature of the matter being referred to an agents and motor dealers board for decision; and

(b) the name of the person objecting to the fee (the **“complainant”**); and

(c) the function the complainant claims the licensee was appointed to perform; and

(d) the functions the complainant claims were performed or to be performed by the licensee or were not performed; and

(e) the fee the complainant claims was charged or is chargeable for the performance of the functions; and

(f) the reasons why the complainant considers the fee is excessive.

(2) The registrar must fix a day for the hearing of the complaint and issue a notice (**“attendance notice”**) requiring the licensee to attend before an agents and motor dealers board at a stated time, day and place to answer the complaint.

(3) If the chief executive has received more than 1 objection about fees charged or chargeable by 1 licensee, the chief executive may deal with all the objections in the complaint.

(4) The complaint and attendance notice may be combined in 1 notice.

When proceeding is taken to start

435. A fee review proceeding is taken to have started on the day the licensee is given a complaint and attendance notice under section 434, unless the parties agree on an earlier day.

Hearing date must be at least 14 days after attendance notice is given

436. The day stated in the attendance notice as the day on which the licensee (**"respondent"**) is required to attend before an agents and motor dealers board must be a day at least 14 days after the proceeding starts.

PART 2—DISCIPLINARY PROCEEDINGS

Division 1—Definitions

Definitions for pt 2

437. In this part—

"former licensee" means a person who held a licence under this or the repealed Act within 3 years of a proceeding under this part being started.

"former salesperson" means a person who was a salesperson within 1 year of a proceeding under this part being started.

"licensee" includes a former licensee.

"salesperson" means a restricted letting agent (employee), real estate salesperson, pastoral house salesperson, motor salesperson or commercial agent (employee) and includes a former salesperson.

Division 2—Starting disciplinary proceedings

Grounds for starting disciplinary proceeding

438. The following are grounds for starting a disciplinary proceeding against a licensee or salesperson—

(a) the licensee or salesperson has been convicted of an indictable offence or an offence against this Act;

(b) the licensee or salesperson has breached—

(i) a code of conduct; or

(ii) an undertaking given under chapter 13, part 2;[182]

(c) the licensee or salesperson has contravened a corresponding law;

(d) the licensee or salesperson has been disqualified from holding a licence under a corresponding law;

(e) for a salesperson—the salesperson is not eligible to be employed as a salesperson;

(f) an amount has been paid from the fund because the licensee or salesperson did, or omitted to do, something that gave rise to the claim against the fund;

(g) the licensee or salesperson fraudulently or improperly obtained or helped someone else to fraudulently or improperly obtain a licence;

(h) the licensee or salesperson has failed to comply with an order made by the small claims tribunal, a Magistrates Court, another court or an agents and motor dealers board;

(i) 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; or

(iii) the licensee has, in carrying on a business or performing a function, been incompetent or acted in an unprofessional way; or

(iv) the licensee has failed to ensure that the licensee's employees 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 person's licence; or

182 Chapter 13 (Injunctions and undertakings) part 2 (Undertakings)

(vi) the licensee is an executive officer of a corporation that an agents and motor dealers board finds guilty of a disciplinary charge under section 480;[183] 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 part from being an executive officer of a corporation;

(j) for a restricted letting agent (employee), real estate salesperson, motor salesperson or commercial agent (employee) (**"employee"**)—the employee has—

(i) in performing a function of a licensee, been incompetent or acted in an unprofessional way; or

(ii) performed a function not authorised under the employee's employment authority;

(k) another ground that may be prescribed under a regulation.

Ground for starting disciplinary proceeding against executive officer

439.(1) This section applies if a ground for starting a disciplinary proceeding against an executive officer of a corporation exists under section 438(i)(vi).

(2) The chief executive must not start a disciplinary proceeding against the executive officer if the chief executive is satisfied—

(a) the act or omission relevant to the proceeding against the corporation was done or made without the officer's knowledge; and

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

183 Section 480 (Orders agents and motor dealers board may make after disciplinary charge hearing)

How to start proceedings

440.(1) A disciplinary proceeding against a person (**"respondent"**) is started by the chief executive by filing with the registrar a notice (**"complaint"**) stating—

(a) the grounds on which a disciplinary charge is to be brought against the respondent; and

(b) the nature of the matter being referred to an agents and motor dealers board for decision.

(2) The registrar must fix a day for the hearing of the complaint and issue a notice (**"attendance notice"**) requiring the respondent to attend before an agents and motor dealers board.

(3) The chief executive must give a copy of the complaint and attendance notice to the respondent.

(4) The complaint and attendance notice may be combined in 1 notice.

When proceeding is taken to start

441. A disciplinary proceeding is taken to have started on the day the person is given a complaint and attendance notice under section 440.

Hearing date must be at least 14 days after attendance notice is given

442. The day stated in the attendance notice as the day on which the respondent is required to attend before an agents and motor dealers board must be a day at least 14 days after the proceeding starts, unless the parties agree on an earlier day.

PART 3—CLAIMS AGAINST THE FUND

Division 1—Definitions

Definitions for pt 3

443. In this part—

“decision-maker”, for a claim, means the registrar or agents and motor dealers board deciding the claim.

“licensee” includes a person who—

(a) does not hold a licence; and

(b) holds out that the person performs the functions of a licensee in the carrying on of a business.

“minor claim” means a claim against the fund of not more than $5 000.

“relevant person” means—

(a) a licensee; or

(b) a licensee’s partner, employee, or agent; or

(c) a person having apparent charge or control of a licensee’s registered office or business.

Division 2—Who can claim

Claims

444.(1) A person (**“claimant”**) may make a claim against the fund if the person suffers financial loss because of the happening of any of the following events—

(a) the contravention of any of the following provisions by a relevant person—

- chapter 4, part 3, division 4, 5 or 6[184]
- chapter 5, part 3, division 4, 5 or 6[185]
- chapter 6, part 3, division 4, 5, or 6[186]
- section 232[187]
- chapter 7, part 3, division 4[188]
- section 280[189]
- chapter 9, part 1[190]
- section 510[191]
- section 513;[192]

(b) a failure of an auctioneer to ensure the buyer of a motor vehicle sold by the auctioneer gains clear title to the vehicle at the time property in the vehicle passes to the buyer, whether or not the auctioneer contravenes section 232;

(c) a failure of a motor dealer to ensure the buyer of a motor vehicle sold by or for the dealer gains clear title to the vehicle at the time property in the vehicle passes to the buyer, whether or not the motor dealer contravenes section 232 or 280;

(d) a contravention of the *Land Sales Act 1984* by a licensee appointed by the owner of land to which that Act applies or a relevant person employed by the licensee;

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184 Chapter 4, part 3, division 4 (Interests in property), 5 (Representations about finance) or 6 (Lands not lawfully useable for residential purposes)

185 Chapter 5, part 3, division 4 (Interests in property), 5 (Representations about finance) or 6 (Lands not lawfully useable for residential purposes)

186 Chapter 6, part 3, division 4 (Interests in property), 5 (Representations about finances) or 6 (Lands not lawfully useable for residential purposes)

187 Section 232 (Guarantee of title for motor vehicles)

188 Chapter 7, part 3, division 4 (Interests in property)

189 Section 280 (Guarantee of title)

190 Chapter 9, part 1 (Trust accounts)

191 Section 510 (Wrongful conversion and false accounts)

192 Section 513 (False representations about property)

(e) a stealing, misappropriation or misapplication by a relevant person of property entrusted to the person as agent for the claimant in the person's capacity as a relevant person.

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

Persons who can not claim

445.(1) A person can not make a claim against the fund for the stealing, misappropriation or misapplication of an amount that a licensee was directed to invest under section 345.[193]

(2) The following persons can not make a claim against the fund for any of the following financial losses—

(a) a seller of livestock who suffers financial loss in relation to the sale of the livestock if—

(i) the livestock are received by a licensee; and

(ii) the licensee and seller agree in writing that the licensee guarantees payment to the seller of the livestock's purchase price;[194]

(b) a licensee who suffers financial loss in the course of performing a function, or carrying on business, as a licensee;

(c) a person holding a licence (however described) under a corresponding law that is similar to a licence under this Act who suffers financial loss in the course of performing a function, or carrying on business, under the person's licence;

(d) a financier of a motor dealer's business who suffers financial loss because of financing the motor dealer's business;

(e) a person who suffers financial loss because the person guaranteed the motor dealer's obligations under a financial arrangement made by the motor dealer.

193 Section 345 (Investments)

194 The practice in section 445(2)(a)(ii) is commonly referred to as 'del credere'.

Division 3—Making and dealing with claims

Claims—time limit

446. A person may claim against the fund only if the person—

(a) makes the claim within the earlier of the following—

(i) 1 year after the person becomes aware that the person has suffered financial loss because of an event mentioned in section 444(1);[195]

(ii) 3 years after the happening of the event that caused the person's financial loss; or

(b) if the person has made a claim against a receiver—makes the claim within 3 months after a receiver has given notice of refusal to allow the person's claim under section 398;[196] or

(c) if the person has started a proceeding in a court of competent jurisdiction to recover the person's financial loss—makes the claim within 3 months after the proceeding ends.

How to make a claim

447.(1) A claim must be made in writing to the chief executive within the time stated in section 446.

(2) The claim must state—

(a) the event alleged to give rise to the claim; and

(b) when the event happened; and

(c) if the claimant was not immediately aware that the claimant suffered financial loss because of the event—when the claimant became aware of the financial loss; and

(d) all relevant details about the event and the financial loss; and

(e) the claimant's estimated financial loss.

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[195] Section 444 (Claims)

[196] Section 398 (Deciding claims)

(3) A claim is taken to have been made on the day the claim is given to the chief executive even though the claimant is unable to state all of the particulars mentioned in subsection (2).

(4) The chief executive may require the claimant to verify the claim, or part of the claim.

Example of verification—

Statutory declaration.

Chief executive may investigate claims and make recommendations

448.(1) The chief executive may inquire, or authorise another person to inquire, into a claim.

(2) If, after investigating the claim, the chief executive considers that there are no grounds on which the claimant may establish a claim against the fund, the chief executive may recommend to the Minister that an ex gratia payment be made to the claimant in relation to the claim.

(3) The chief executive may make the recommendation only if the chief executive is satisfied that—

(a) the person suffered financial loss because of the actions of a relevant person; and

(b) it is reasonable in all the circumstances to make the payment.

(4) If the Minister accepts the recommendation, the Minister may approve that the chief executive authorise the payment from the fund.

Chief executive to give respondent notice of claim

449.(1) The chief executive must give notice of a claim (**"claim notice"**) received under section 447 to the person or persons (**"respondent"**) whose actions are alleged to have given rise to the claim before a decision about the claim is made.

(2) The claim notice must give particulars of the claim, including the amount of the alleged financial loss, and the event alleged to have given rise to the claim.

(3) The respondent may—

(a) give the chief executive any information relevant to the claim; or

(b) attempt to settle the claim with the claimant.

(4) If the respondent intends giving the chief executive information mentioned in subsection (3)(a), the respondent must do so within 28 days after the claim notice is given.

(5) If the respondent intends to attempt to settle the claim under subsection (3)(b), the respondent must advise the chief executive of the intention within 28 days after the claim notice is given.

(6) If the respondent and claimant settle the claim—

(a) the respondent must advise the chief executive in writing and provide satisfactory evidence of the settlement; and

(b) if the chief executive is satisfied that the claim has settled—the claim is taken to have been withdrawn.

Dealing with unsettled claims

450.(1) The chief executive must refer unsettled claims to the registrar.

(2) The registrar must decide a minor claim personally, unless the claim is 1 of a number of related claims against a respondent.

(3) The registrar must refer all claims, other than minor claims the registrar deals with personally, to an agents and motor dealers board for decision.

Matters that must be taken into account when deciding claims

451.(1) A claim may be decided only if—

(a) the period mentioned in section 449(4) has ended; or

(b) if the respondent has given notice of intention to attempt to settle the claim under section 449(5)—the respondent and the claimant have failed to settle the claim within a reasonable time.

(2) In deciding the claim, the decision-maker must take into account any amount the claimant might reasonably have received or recovered if not for the claimant's neglect or default.

Deciding claims—registrar

452.(1) This section applies to a minor claim the registrar must decide.

(2) The registrar may ask the claimant or respondent for the further information or documents the registrar reasonably requires to decide the claim.

(3) The registrar must decide the claim without a hearing.

(4) The registrar may—

(a) accept the claim or reject the claim, wholly or partly; and

(b) make, in relation to the claim, any order an agents and motor dealers board may make under section 481.[197]

(5) The registrar must give the claimant and respondent written notice of the registrar's decision to accept or reject the claim and the registrar's order, if any, within 14 days of making the decision.

(6) If the registrar rejects the claim, the registrar must also give the claimant an information notice about the decision.

Deciding claims without a hearing—agents and motor dealers board

453.(1) This section applies to a claim an agents and motor dealers board decides to deal with without a hearing.

(2) The board may ask the claimant or respondent for the further information or documents the board reasonably requires to decide the claim.

(3) The board may—

(a) accept the claim or reject the claim, wholly or partly, and make, in relation to the claim, any order an agents and motor dealers board may make under section 481;[198] or

(b) if the board considers that it is not appropriate to decide the claim on the information before it—refer the claim back to the registrar

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[197] Section 481 (Orders agents and motor dealers board may make on claim hearing)

[198] Section 481 (Orders agents and motor dealers board may make on claim hearing)

for decision at a hearing under part 4.

(4) If the board decides the claim, the board must give the claimant and respondent written notice of the board's decision and the board's order, if any, within 14 days of making the decision.

(5) If the board rejects the claim, the board must also give the claimant an information notice about the decision.

Division 4—Payment of claims

Payment of claims

454.(1) If a claim is allowed under division 3 or section 481, the chief executive must authorise payment from the fund in the amount decided by the decision-maker.

(2) Subsection (1) is subject to section 457(2).

(3) A payment under subsection (1)—

(a) must not be made until the end of the period allowed for appeal against a decision of the decision-maker or, if an appeal has been made, until the appeal is finally decided; and

(b) is taken to be in full settlement of the claim against the fund.

Limits on recovery from fund

455.(1) A claimant can not recover from the fund an amount more than the balance of the claimant's financial loss after deducting from the claimant's loss—

(a) the amount, including the value of all benefits, received or recovered by the claimant from a source other than the fund in reduction of the loss; and

(b) the amount, including the value of all benefits, the decision-maker considers the claimant might reasonably have received or recovered if not for the claimant's neglect or default.

Examples of paragraph (a)—

1. Compensation received from the licensee for the loss.

2. A payment from a receiver for the loss.

(2) The most a claimant may recover from the fund is $500 000 or a higher amount prescribed under a regulation.

(3) A regulation may prescribe the total amount that may be paid from the fund because of a contravention, stealing, misappropriation or misapplication by a single person.

(4) Interest is not payable from the fund on a judgment obtained or a claim allowed against the fund.

Notice of other recovery

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

Maximum penalty—200 penalty units or 3 years imprisonment.

Division 5—Reimbursements to fund

Production of documents

457.(1) The chief executive may ask a claimant to give the chief executive the documents necessary to allow the chief executive to exercise the chief executive's rights against a relevant person under section 458.

(2) If the claimant fails to comply with a request under subsection (1), the chief executive may defer payment of the claim until the request is complied with.

Subrogation

458.(1) If an amount is paid from the fund in settlement of a claim, the chief executive is subrogated, to the extent of the payment, to the claimant's rights and remedies against the relevant person in relation to whom the claim arose.

(2) The chief executive must pay an amount the chief executive recovers from the relevant person to the fund.

Recovery of overpayments

459.(1) This section applies if a claimant who has received a payment from the fund recovers—

(a) an amount more than the claimant is entitled to recover under section 455[199] (**"overpayment"**); or

(b) a thing capable of physical delivery in relation to which the claimant received a payment from the fund.

(2) The claimant must—

(a) reimburse the overpayment to the fund; or

(b) for a thing capable of physical delivery—

(i) deliver the thing to the chief executive in accordance with the chief executive's direction; or

(ii) reimburse to the fund the amount of the payment from the fund the person received in relation to the thing.

Maximum penalty—200 penalty units.

(3) The chief executive may recover the overpayment or the amount of the payment from the fund the person received in relation to the thing as a debt in a court of competent jurisdiction.

(4) If the chief executive receives a thing, the chief executive may sell the thing in the way the chief executive decides.

(5) The chief executive must pay an amount received by the chief executive under subsection (2), (3) or (4) to the fund.

Executive officers to reimburse fund

460.(1) This section applies if an amount is paid from the fund in settlement, wholly or partly, of a claim relating to the business of a licensee that is a corporation.

199 Section 455 (Limits on recovery from fund)

(2) The corporation's executive officers when the event that gave rise to the claim happened are jointly and severally liable to reimburse the fund for the payment.

(3) The chief executive may recover an amount liable to be reimbursed under subsection (2) as a debt in a court of competent jurisdiction.

(4) The chief executive must pay an amount the chief executive recovers under this section to the fund.

Division 6—Miscellaneous

Insufficiency of fund

461.(1) If there is not enough in the fund to pay all claims decided in a financial year, a claim that is unpaid, or partly unpaid, is—

(a) charged against future receipts of the fund; and

(b) payable from the fund when there is enough in it to pay the claim or balance of the claim.

(2) Claims that can not be paid immediately from the fund—

(a) are payable in the order they are approved by the chief executive; and

(b) are not chargeable against other property under the chief executive's control.

Chief executive not liable for payments from fund

462. The chief executive incurs no liability for a payment from the fund under this division made in good faith in the exercise or purported exercise of the chief executive's powers.

PART 4—HEARINGS

Division 1—Procedure

Establishment of agents and motor dealers board for hearing

463.(1) The registrar may establish an agents and motor dealers board—

(a) to review fees chargeable by licensees; and

(b) to hear and decide disciplinary matters involving licensees; and

(c) to hear and decide claims against the fund.

(2) The registrar must select as members of the board for the hearing—

(a) 1 panel member (**"industry member"**) who holds a licence; and

(b) 1 panel member who is a lawyer; and

(c) 1 panel member representing consumer interests.

(3) The lawyer is to be the chairperson of the board.

(4) The industry member must be the holder of a licence in the industry the respondent appearing before the board is employed or engaged in.

(5) However, if the industry in which the respondent is employed or engaged is the pastoral house industry, the industry member must be a member who holds a real estate agent's licence or auctioneer's licence.

(6) The registrar must keep a record of the name of the chairperson and the other members constituting the board for each hearing and the purpose for which the hearing was held.

Counsel assisting

464.(1) The agents and motor dealers board may, after first obtaining the registrar's approval, appoint a lawyer to assist the board for a hearing.

(2) Without limiting the ways the lawyer may assist the board under subsection (1), the lawyer may, to the extent the board considers appropriate, examine or cross-examine any witness on any matter the board considers relevant to the hearing.

Conduct of hearings

465.(1) The chairperson presides at an agents and motor dealers board hearing.

(2) The decision of the board is the decision of the majority of its members.

Venues

466.(1) An agents and motor dealers board may sit at the times and places decided by the registrar.

(2) Subsection (1) does not affect the board's power under section 476[200] to adjourn a hearing of a disciplinary charge to a day fixed by the board.

Hearings to be held in private

467.(1) Hearings of an agents and motor dealers board are not open to the public.

(2) However, a person may attend a board hearing with the agreement of the board and all the parties appearing before the board.

Right of appearance and representation

468. The following persons are entitled to appear before an agents and motor dealers board at a hearing—

(a) the respondent;

(b) the respondent's lawyer;

(c) the claimant;

(d) the claimant's lawyer;

(e) the complainant;

(f) the complainant's lawyer;

(g) the chief executive;

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[200] Section 476 (Power to adjourn hearings)

(h) the chief executive's representative;

(i) a lawyer appointed to assist the board;

(j) another person to whom the board gives leave to appear.

Non-appearance of respondent

469. If the agents and motor dealers board is satisfied that the respondent has been given an attendance notice for the hearing and does not appear at the hearing, the board may hear and decide the matter in the respondent's absence.

Procedure

470.(1) When conducting the hearing, the agents and motor dealers board must—

(a) observe natural justice; and

(b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it.

(2) In conducting the hearing, the board—

(a) is not bound by the rules of evidence; and

(b) may inform itself of any matter in the way it considers appropriate; and

(c) may decide the procedures to be followed for the hearing.

(3) However, the board must comply with this part and any procedural rules that may be prescribed under a regulation.

Amendment of complaint

471.(1) The agents and motor dealers board may at any stage of the hearing amend the particulars of the complaint in the way it considers appropriate—

(a) if the board is asked by the party who brought the complaint and it is satisfied the amendment is of a formal or minor nature; or

(b) on its own initiative, if all the parties agree.

(2) However, the complaint must not be amended in a way that introduces different or additional grounds of complaint.

(3) The amended complaint is taken to be the complaint.

Division 2—Attendance notice

Attendance notice

472.(1) The agents and motor dealers board may, on the application of a party to a hearing or on the board's own initiative, issue an attendance notice requiring a person to appear before the board at a stated time and place to give evidence or to produce a stated document or thing.

(2) An attendance notice must be served personally on the person.

(3) The person must not, without reasonable excuse, fail to attend as required by the notice and continue to attend as required by the presiding member until excused from further attendance.

Maximum penalty—200 penalty units.

Division 3—Agents and motor dealers board's powers

Powers of agents and motor dealers board relating to taking of evidence

473.(1) For the hearing, the agents and motor dealers board may—

(a) take evidence on oath; or

(b) require a person appearing before the board to give evidence to take an oath; or

(c) administer an oath to a person appearing before the board.

(2) A person appearing as a witness at the board hearing must not, without reasonable excuse—

(a) fail to be sworn; or

(b) fail to answer a question that the person is required to answer by the board; or

(c) fail to produce a document that the person was required to produce by an attendance notice served on the person.

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

Inspection of documents

474.(1) If a document or thing is produced to an agents and motor dealers board at a hearing, the board may—

(a) inspect the document or thing; and

(b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the hearing.

(2) The board may also take possession of the document or thing, and keep it while it is necessary for the hearing.

(3) While it keeps a document or thing, the board must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at the reasonable time, date and place the board decides.

Power to refer matter for expert assessment or opinion

475.(1) An agents and motor dealers board may refer a matter of a technical nature arising in the course of a hearing for investigation by an appropriate expert.

(2) In carrying out an investigation under this section, the expert has the same protection and immunity as a member of the board.

(3) The expert must report the results of the investigation in writing to the board and provide the parties with copies of the report.

(4) The board may adopt the findings of the expert, wholly or partly.

Power to adjourn hearings

476. The agents and motor dealers board may adjourn the hearing from time to time.

Contempt of agents and motor dealers board

477. A person must not—

(a) insult an agents and motor dealers board or a board member; or

(b) deliberately interrupt a board hearing; or

(c) create or continue or join in creating or continuing, a disturbance in or near a place where the board is conducting the hearing; or

(d) do anything that would be contempt of court if the board were a judge acting judicially.

Maximum penalty—200 penalty units.

Protection of members etc.

478.(1) An agents and motor dealers board member has, in the performance of the member's duties as a member, the same protection and immunity as a Supreme Court judge carrying out the functions of a judge.

(2) A person representing a person before an agents and motor dealers board has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

(3) A person appearing before an agents and motor dealers board as a witness has the same protection as a witness in a proceeding in the Supreme Court.

(4) A document produced at, or used for, a discipline and review hearing has the same protection during the hearing it would have if produced before the Supreme Court.

Division 4—Agents and motor dealers board's orders

Orders agents and motor dealers board may make on fee review hearing

479. An agents and motor dealers board may make any of the following orders on a fee review hearing—

(a) an order declaring that a fee is, or is not, excessive;

(b) an order declaring an appropriate fee;

(c) an order requiring a stated person to pay a stated amount to another stated person within a stated time;

(d) another order the board thinks appropriate to ensure a stated person observes the provisions of this Act.

Orders agents and motor dealers board may make on disciplinary charge hearing

480.(1) An agents and motor dealers board may make any of the following orders against a person the board finds guilty of a disciplinary charge brought under this Act—

(a) an order reprimanding the person;

(b) an order that the person pay to the chief executive within the time stated in the order, a fine of not more than 50 penalty units;

(c) an order that the person's licence be suspended for the period stated in the order;

(d) an order—

(i) if the person is the holder of a licence at the time the order is made—that the licence be cancelled; or

(ii) whether or not the person is the holder of a licence at the time the order is made—that the person be disqualified permanently, or for the period stated in the order, from holding a licence;

(e) an order, for a licensed individual who is an executive officer of a corporation, that the individual be disqualified permanently, or for the period stated in the order, from being an executive officer of a corporation that holds a licence;

(f) an order that the person's name be entered in the register of ineligible persons;

(g) an order imposing conditions on, or amending or revoking the conditions of, the person's licence;

(h) another order the board thinks appropriate to ensure the person complies with this Act.

(2) The board may not make an order under subsection (1)(d)(ii) disqualifying the person from holding a licence if the board is satisfied that a court has, in relation to the matter giving rise to the disciplinary charge, declined to make an order under section 530(2)[201] disqualifying the person from holding a licence after being asked to do so.

Orders agents and motor dealers board may make on claim hearing

481. An agents and motor dealers board may make the following orders on a claim hearing—

(a) an order allowing or rejecting the claim, wholly or partly;

(b) an order about recovery of an amount payable in relation to a claim;

(c) an order that no amount is recoverable in relation to a claim.

Form of order

482. An agents and motor dealers board order must—

(a) be signed by the presiding member; and

(b) state the board's findings in relation to the facts of the case.

Service of order

483. The registrar must give a copy of an agents and motor dealers board order relating to a hearing to the respondent.

Recovery of fine or other amounts

484. An order of the board requiring the payment of an amount may be filed in the registry of a court having jurisdiction for the recovery of a debt equal to the amount and, on being filed, is taken to be an order of that court and may be enforced as a debt.

[201] Section 530 (Power of court)

Publication

485.(1) The chief executive may publish, in any way the chief executive considers appropriate, details about—

(a) the respondent to a hearing; and

(b) the hearing, including matters dealt with at the hearing; and

(c) the agents and motor dealers board's findings at the hearing; and

(d) any order made at the hearing.

(2) The chief executive has, in a proceeding for defamation for a publication made by the chief executive under subsection (1), a defence of absolute privilege if the publication was made in good faith.

CHAPTER 12—ENFORCEMENT

PART 1—INSPECTORS

Appointment

486.(1) The chief executive is an inspector.

(2) The chief executive may appoint a person as an inspector.

(3) The chief executive may appoint a person as an inspector only if the chief executive is satisfied the person has the necessary expertise to be an inspector.

Identity cards

487.(1) The chief executive must give each inspector an identity card.

(2) The identity card must—

(a) contain a recent photo of the inspector; and

(b) be signed by the inspector; and

(c) identify the person as an inspector.

(3) A person who stops being an inspector must return the identity card to the chief executive as soon as practicable, but within 21 days, after the person stops being an inspector, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

Production or display of identity cards

488.(1) An inspector may exercise a power under this Act in relation to a person only if the inspector first produces or displays the inspector's identity card for inspection by the person.

(2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

PART 2—INSPECTORS' POWERS

Entry to places

489.(1) An inspector may enter a place if—

(a) the occupier of the place consents to the entry; or

(b) the entry is authorised by a warrant; or

(c) it is a licensee's place of business and the entry is made when the place is open for business or otherwise open for entry.

(2) An inspector, without the occupier's consent or a warrant, may—

(a) enter a public place when the place is open to the public; or

(b) enter the land around premises to ask its occupier for consent to enter the premises.

Power to require documents to be produced

490.(1) An inspector may require—

(a) a licensee to produce—

(i) the licensee's licence; or

(ii) documents relating to the licensee's trust account; or

(b) a licensee or other person who has possession, custody, or control of documents or things relating to the licensee's business to produce the documents or things; or

(c) a licensee or other person to give the inspector information about a produced document.

Examples of paragraph (b)—

1. Contracts relating to a transaction by or with the licensee in connection with the licensee's business as licensee.

2. Motor vehicle compliance plates.

(2) The inspector may require the licensee or other person to give the inspector the document, thing or information immediately or at a stated reasonable place at a stated reasonable time.

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

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

(4) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

(5) The inspector may—

(a) inspect a produced document or thing; or

(b) audit or copy a produced document; or

(c) seize a document or thing if the inspector reasonably believes—

(i) the document or thing is evidence of an offence against this Act; and

(ii) the seizure is necessary to prevent—

(A) the document or thing being hidden, lost or destroyed; or

(B) the document or thing being used to commit, continue or repeat an offence against this Act.

(6) In this section—

"licensee" includes the following—

(a) a person who was a licensee but whose licence is no longer current;

(b) a person who is not licensed but who acts as a licensee;

(c) a partner of a licensee;

(d) a person employed, or apparently employed, by a licensee.

"trust account" includes any account relating to money received by a licensee as a licensee.

Warrants

491.(1) An inspector may apply to a magistrate for a warrant for a place.

(2) The application must—

(a) be sworn; and

(b) state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require that additional information supporting the application be given by a statutory declaration.

(4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing (the **"evidence"**) that may provide evidence of an offence against this Act; and

(b) the evidence is, or may be within the next 14 days, at the place.

(5) The warrant must state—

(a) that an inspector may, with necessary and reasonable help and force—

(i) enter the place; and

(ii) exercise the inspector's powers under this Act; and

(b) the offence for which the warrant is sought; and

(c) the evidence that may be seized under the warrant; and

(d) the hours when the place may be entered; and

(e) the day, within 14 days after the warrant's issue, the warrant ends.

Warrants—applications made other than in person

492.(1) An inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including for example, the inspector's remote location.

(2) Before applying for the warrant, the inspector must prepare an application that states the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) If the magistrate issues the warrant and it is reasonably practicable to fax a copy of it to the inspector, the magistrate must immediately fax the copy to the inspector.

(5) If the magistrate issues the warrant but it is not reasonably practicable to fax a copy of it to the inspector—

(a) the magistrate must—

(i) tell the inspector what the terms of the warrant are; and

(ii) tell the inspector the date and time the warrant was signed; and

(b) the inspector must—

(i) complete a form of warrant in the same terms as the warrant issued by the magistrate; and

(ii) write on the warrant form the name of the magistrate and the date and time the magistrate signed the warrant.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.

(7) The inspector must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if the inspector completed a warrant form—the completed warrant form.

(8) On receiving the application and any warrant form, the magistrate must attach them to the warrant.

(9) Unless the contrary is proven, a court must presume that a power exercised by an inspector was not authorised by a warrant under this section if—

(a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and

(b) the warrant is not produced in evidence.

Inspector's powers in a place under a warrant

493.(1) This section applies to an inspector who enters a place under a warrant.[202]

(2) The inspector may—

(a) search any part of the place; or

(b) seize the evidence for which the warrant was issued; or

(c) seize a thing if the inspector reasonably believes—

(i) the thing is evidence of an offence against this Act; and

(ii) the seizure is necessary to prevent—

(A) the thing being hidden, lost or destroyed; or

(B) the thing being used to commit, continue or repeat an offence against this Act; or

[202] Section 489 (Entry to places)

(d) inspect, photograph or film the place or anything in the place; or

(e) copy a document in the place; or

(f) take into the place the persons, equipment and materials the inspector reasonably requires for exercising a power under this Act; or

(g) require a person in the place to give the inspector reasonable help to exercise the powers mentioned in paragraphs (a) to (f).

(3) A person must comply with a requirement under subsection (2)(g), unless the person has a reasonable excuse.

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

Procedure after thing seized

494.(1) As soon as practicable after a thing is seized by an inspector under section 493, the inspector must give a receipt for it to the person from whom it was seized.

(2) The inspector must allow a person who would be entitled to the seized thing if it were not in the inspector's possession—

(a) to inspect it; or

(b) if it is a document—to copy it.

(3) The inspector must return the seized thing to the person at the end of—

(a) 1 year; or

(b) if a proceeding for an offence involving it is started within 1 year—the proceeding and any appeal from the proceeding.

(4) Despite subsection (3), the inspector must return the seized thing to the person if the inspector is satisfied that—

(a) its retention as evidence is no longer necessary; and

(b) its return is not likely to result in its use in repeating the offence.

Power to require name and address

495.(1) An inspector may require a person to state the person's name and address if the inspector—

(a) finds the person committing an offence against this Act; or

(b) finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect that the person has committed, or assisted in the commission of, an offence against this Act.

(2) When making the requirement, the inspector must warn the person that it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.

(3) The inspector may require the person to give evidence of the correctness of the person's name or address if the inspector reasonably suspects the name or address given is false.

(4) A person must comply with an inspector's requirement under subsection (1) or (3), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(5) A person does not commit an offence against subsection (4) if—

(a) the inspector required the person to state the person's name and address on suspicion of the person having committed an offence against this Act; and

(b) the person is not proved to have committed the offence.

Power to require information

496.(1) This section applies if an inspector reasonably believes—

(a) an offence against this Act has been committed; and

(b) a person may be able to give information about the offence.

(2) The inspector may require the person to give information about the offence.

(3) The inspector may require the person to give the inspector the information at a stated reasonable place at a stated reasonable time.

(4) The person must comply with a requirement under subsection (2) or (3), unless the person has a reasonable excuse.

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

(5) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

PART 3—OTHER PROVISIONS ABOUT ENFORCEMENT

Duties of financial institution managers

497.(1) The manager or principal officer of an office or branch of a financial institution where trust money has been deposited, whether to a trust account or another account, must—

(a) allow an inspector, on written demand, to inspect and copy any documents relating to the account; and

(b) immediately a licensee's trust account is overdrawn, inform the chief executive of that fact; and

(c) immediately there is insufficient money in a licensee's trust account to meet a cheque drawn on the account, inform the chief executive of—

(i) the amount for which the cheque is drawn; and

(ii) the amount in the account.

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

(2) In this section—

"licensee" includes—

(a) a former licensee; and

(b) a person who is not licensed but who acts as a licensee.

"trust account" includes any account relating to money received by a licensee as a licensee.

"trust money" includes—

(a) an amount that, under section 344,[203] is required to be deposited to a licensee's trust account; and

(b) an instrument for the payment of an amount mentioned in paragraph (a) if the instrument may be paid into a financial institution; and

(c) a security for an amount mentioned in paragraph (a) if title to the security is transferable by delivery.

Threatening or obstructing inspectors

498. A person must not threaten or obstruct an inspector who is exercising a power under this Act, unless the person has a reasonable excuse.

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

Powers of chief executive

499.(1) The chief executive may inquire about a licensee's employee.

(2) For subsection (1), the chief executive may—

(a) ask the commissioner of the police service to give the chief executive a report on the employee's criminal history; and

(b) if the employee has been employed or licensed in a place outside Queensland in a similar capacity—ask the corresponding authority in the other place to provide a report about the employee's eligibility.

(3) The commissioner of the police service must comply with a request under subsection (2)(a).

(4) In this section—

"corresponding authority" means the entity having functions that correspond to the functions of the chief executive under this Act.

"employee" means a restricted letting agent (employee), real estate

[203] Section 344 (Dealing with amount on receipt)

salesperson, pastoral house salesperson, motor salesperson or commercial agent (employee).

CHAPTER 13—INJUNCTIONS AND UNDERTAKINGS

PART 1—INJUNCTIONS

Injunctions

500. An injunction under this part may be granted by a District Court against a person (the **"respondent"**) at any other time.

Who may apply for injunction

501. The following persons may apply to a District Court for an injunction—

(a) the chief executive;

(b) a person aggrieved by the respondent's conduct.

Grounds for injunction

502. A District Court may grant an injunction if it is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

(a) a contravention of this Act or a code of conduct; or

(b) attempting to contravene this Act or a code of conduct; or

(c) aiding, abetting, counselling or procuring a person to contravene this Act or a code of conduct; or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act or a code of conduct; 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 code of conduct; or

(f) conspiring with others to contravene this Act or a code of conduct.

Court’s powers for injunctions

503.(1) The power of a 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) A final injunction may, by consent of the parties, be granted under this section without proof that proper grounds for the injunction exist.

(5) A District Court may rescind or vary an injunction at any time.

Terms of injunction

504.(1) A 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 code of conduct.

Undertakings as to costs

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

PART 2—UNDERTAKINGS

Chief executive may seek undertaking after contravention

506.(1) If the chief executive reasonably believes a person has contravened or been involved in a contravention of this Act or a code of conduct, the chief executive may, by written notice given to the person—

(a) state the act or omission the chief executive reasonably believes is the contravention; and

(b) ask the person to give the chief executive a written undertaking that the person will not continue or repeat the act or omission.

(2) If—

(a) the person gives the undertaking and, if the contravention is conduct consisting of a series of acts or omissions, the person stops the conduct; and

(b) the chief executive accepts the undertaking;

the chief executive can not start an offence proceeding against the person for the contravention, unless the chief executive withdraws the undertaking under section 507.

Variation and withdrawal of undertakings

507.(1) If the chief executive accepts an undertaking under section 506, 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 reasonably believes that before it was accepted—

(i) the person who gave it contravened this Act in a way unknown to the chief executive; and

(ii) had the chief executive known about the contravention, the chief executive would not have accepted the undertaking or would not have accepted it unless its terms were changed.

(2) The chief executive may also withdraw the undertaking if the chief executive reasonably believes it is no longer necessary.

(3) If the chief executive varies or withdraws, or agrees to the variation or withdrawal of, the undertaking, the chief executive must give the person who gave it written notice of its variation or withdrawal.

(4) The variation or withdrawal takes effect when written notice of the variation or withdrawal is given.

Enforcement of undertakings

508.(1) If the chief executive reasonably believes a person has contravened a term of an undertaking, the chief executive may apply to a District Court for an order under this section.

(2) If the court is satisfied that 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) A 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.

Register of undertakings

509.(1) The chief executive must keep a register of each undertaking given to the chief executive by a person under this part.

(2) The register must contain a copy of the undertaking.

(3) A person may, on payment of the fee prescribed under a regulation—

(a) inspect the register at the department's head office when the office is open to the public; and

(b) obtain a copy of an undertaking in the register.

CHAPTER 14—GENERAL OFFENCES, EVIDENTIARY MATTERS AND LEGAL PROCEEDINGS

PART 1—GENERAL OFFENCES

Wrongful conversion and false accounts

510.(1) This section applies if a licensee, in the performance of the licensee's functions, receives an amount belonging to someone else.

(2) A licensee who—

(a) dishonestly converts the amount to the licensee'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 dishonestly converted an amount in the licensee's trust account to the licensee's own use or someone else's use without having to prove that the amount belonged to a particular person.

Indictable and summary offences

511. An offence against this Act, other than an offence against section 510, is a summary offence.

Proceedings for an offence against s 510

512.(1) A proceeding for an offence against section 510 may be taken, at the prosecution's election—

(a) by way of summary proceedings under the *Justices Act 1886*; or

(b) on indictment.

(2) A magistrate must not hear a charge for the offence summarily if—

(a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or

(b) the magistrate considers that the charge should be prosecuted on indictment.

(3) If subsection (2) applies—

(a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and

(b) a plea of the person charged at the start of the proceeding must be disregarded; and

(c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and

(d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).[204]

(4) The maximum penalty that may be summarily imposed for an offence against section 510 is 200 penalty units or 3 years imprisonment.

False representations about property

513.(1) A licensee or salesperson must not represent in any way to someone else anything that is false or misleading about property that the licensee has for letting, sale or auction.

Maximum penalty—200 penalty units or 2 years imprisonment.

(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 that state of affairs does exist.

(3) It is a defence to a prosecution under subsection (1) for the defendant to prove that the defendant believed on reasonable grounds that the representation was true or not misleading.

(4) It is not a defence to a prosecution under subsection (1) for the defendant to prove that an agreement with the person was rescinded or that the person did not enter into an agreement because of the representation.

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

(6) In this section—

"licensee" means a restricted letting agent, real estate agent, pastoral house, pastoral house manager, pastoral house auctioneer, auctioneer or motor

[204] Section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

dealer and includes a person who—

(a) does not hold a licence as a restricted letting agent, real estate agent, pastoral house, pastoral house manager, pastoral house auctioneer, auctioneer or motor dealer; and

(b) holds out that the person performs the functions of a licensee in the carrying on of a business.

"salesperson" means a restricted letting agent (employee), real estate salesperson, pastoral house salesperson or motor salesperson.

Tampering with odometers

514.(1) A person must not tamper with 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 is evidence of a false representation by the person who tampered with 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.

Offence to charge fee for providing documents etc.

515.(1) A licensee or a licensee's employee must not charge a fee for the provision, preparation or completion of a document for a transaction relating to, or arising out of, the performance of a licensee's functions.

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

(2) Subsection (1) does not limit the *Legal Practitioners Act 1995*, section 19[205] or the *Queensland Law Society Act 1952*, section 39.[206]

(3) This section does not apply to the provision of a security interest certificate under section 232 or 280(4).[207]

Offence to ask for, or receive, excess or improper remuneration

516.(1) If an amount is prescribed under a regulation as the maximum amount allowed to a licensee for the performance of a licensee's functions in relation to a stated transaction, a licensee must not ask for, or receive, a commission or reward for the transaction greater than the amount allowed under the regulation.

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

(2) If, in a proceeding under this section, an amount is alleged to be payable to the licensee for recouping expenditure lawfully incurred by the licensee in connection with the transaction, the licensee must establish to the court's satisfaction, on the balance of probabilities, that the expenditure was lawfully incurred.

(3) If a licensee is convicted of an offence against subsection (1) or fails to satisfy the court under subsection (2) about expenditure incurred, the convicting court must also order the licensee to refund the amount to which the licensee was not entitled to the person from whom it was obtained.

(4) This section has effect despite any arrangement to the contrary.

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205 Section 19 (Conveyancing how prohibited)

206 Section 39 (Persons practising without certificates)

207 Section 232 (Guarantee for title of motor vehicles) or section 280 (Guarantee of title)

Offence to fail to comply with court order

517.(1) A licensee must comply with a court order requiring the licensee to do something or refrain from doing something within the time stated in the order or, if no time is stated, within 14 days after the making of the order.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A conviction for an offence against subsection (1) does not affect a right or remedy a person may have against the licensee under the order.

Offence to deal with trust account

518. A person must not operate a licensee's trust account unless the person is—

(a) the licensee; or

(b) a person actually employed by the licensee and authorised by the licensee to operate on the trust account; or

(c) otherwise permitted under this Act to operate on the licensee's trust account.

Maximum penalty—200 penalty units or 3 years imprisonment.

Offence to lend or borrow licence

519.(1) A licensee must not—

(a) 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, or on another basis, 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 licence issued to the licensee.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) A person must not borrow, hire or buy 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.

(4) In this section—

"permit" includes allow.

False or misleading statements

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

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) In this section—

"official" means the chief executive, an inspector or another person in the department in which this Act is administered.

False or misleading documents

521.(1) A person must not, for this Act, give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

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

(a) informs the official, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) A person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

(4) In this section—

"official" means the chief executive, an inspector, another person in the department in which this Act is administered or a member of an agents and motor dealers board.

Prohibited practices

522.(1) A person must not, for reward, supply, or undertake to supply, or advertise or hold out in any way that the person will supply to any person addresses or other particulars of—

(a) houses that are to let; or

(b) houses, land or estates that are for sale.

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

(2) Subsection (1) does not apply to a real estate agent or pastoral house that has been appointed by the landlords or sellers of the houses, land or estates to perform a function and has the landlord's or seller's consent to supply the particulars.

(3) A person must not display photographs of real property for sale for someone else or supply particulars of the property (other than in a newspaper) unless—

(a) the person is a real estate agent or pastoral house; and

(b) the person has been properly appointed to sell the property; and

(c) the photograph is displayed or the particulars are supplied free of charge.

Maximum penalty—200 penalty units.

(4) In this section—

"newspaper" see the *Printing and Newspapers Act 1981*, section 5.[208]

[208] Section 5 defines "newspaper" to include a paper or pamphlet containing any public news, intelligence, occurrences or any remarks or observations thereon or upon any political matter, printed for sale or distribution, and published periodically or in parts or numbers at intervals not exceeding 31 days between the publication of any 2 such papers or pamphlets or parts or numbers, but does not include any document published in the cause of his or her duty by the Government Printer, or any paper containing only matter wholly of a commercial nature.

PART 2—EVIDENTIARY MATTERS

Evidence of tampering by a motor dealer

523.(1) Evidence that a motor vehicle's odometer was tampered with to reduce the distance shown on the odometer when the vehicle was in a motor dealer's possession is evidence that the dealer contravened section 514(1)(a).[209]

(2) For subsection (1), it is enough to prove that a motor vehicle's odometer reading shortly after a motor dealer had possession of the vehicle was less than its reading when the dealer took possession of the vehicle.

(3) Evidence that a motor vehicle's odometer was tampered with to increase the distance shown on the odometer when the vehicle was in a motor dealer's possession is evidence that the dealer contravened section 514(1)(b).

(4) In this section—

"possession", of a motor vehicle, includes custody and control of the vehicle.

Continuing false representation—tampered with odometer

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

(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) for a proceeding mentioned in subsection (1)(a)—the vehicle had not travelled more than the distance shown on the odometer; or

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[209] Section 514 (Tampering with odometers)

(b) for a proceeding mentioned in subsection (1)(b)—the vehicle had travelled more than the distance shown on the odometer.

Evidentiary provisions

525.(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, the register, a member of an agents and motor dealers board or an inspector is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by a person mentioned in subsection (3) and 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 under this Act; or

(ii) was given a stated notice, order, requirement or direction under this Act;

(c) another matter prescribed under a regulation.

Entries in licensee's books

526. An entry in a book 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.

PART 3—PROCEEDINGS

Limitation on time for starting proceedings

527. A proceeding for an offence against this Act must start—

(a) within 1 year after the commission of the offence; or

(b) within 6 months after the offence comes to the complainant's knowledge, but within 3 years after the commission of the offence.

Responsibility for acts or omissions of representatives

528.(1) In this section—

"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.

(2) Subsections (3) and (4) apply in a proceeding for an offence against this Act.

(3) 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.

(4) 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.

Executive officers must ensure corporation complies with Act

529.(1) The executive officers of a corporation must ensure that the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commit an offence, namely, the offence of failing to ensure that the corporation complies with this Act.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has committed an offence against this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with this Act.

(4) However, it is a defence for an executive officer to prove that—

(a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Power of court

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

(2) The court may also order that a person convicted of an offence against this Act be disqualified from holding a licence under this Act for a stated period or permanently.

(3) The court may make an order under subsection (1) or (2)—

(a) on the chief executive's application; or

(b) on its own initiative.

(4) 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.

Allegations of false or misleading representations or statements etc.

531. In any proceeding for an offence against this Act defined as 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'.

CHAPTER 15—APPEALS

Appeals against decisions of chief executive

532. A person (an **"appellant"**) aggrieved by a decision of the chief executive made under a provision specified in schedule 1, part 1 may appeal against the decision to a Magistrates Court under this part.

Appeals against decisions of registrar

533. A person (also an **"appellant"**) aggrieved by a decision of the registrar made under section 452[210] may appeal against the decision to a Magistrates Court under this part.

[210] Section 452 (Deciding claims—registrar)

Appeals against decisions of agents and motor dealers board

534. A person (also an **"appellant"**) aggrieved by an order of an agents and motor dealers board made under a provision specified in schedule 1, part 2 may appeal to a Magistrates Court under this part.

How to start appeal

535.(1) An appeal is started by the appellant—

(a) filing a written notice of appeal with the clerk of the court of the Magistrates Court nearest the place where the appellant resides or carries on, or proposes to carry on, business or employment; and

(b) giving a copy of the notice to the chief executive.

(2) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against.

(3) The court may at any time extend the period for filing the notice of appeal.

(4) The notice of appeal must state the grounds of the appeal.

Stay of operation of decisions

536.(1) A Magistrates Court has power to grant a stay of a decision, other than a decision made under section 77, 78 or 379,[211] appealed against for the purpose of securing the effectiveness of the appeal.

(2) A stay—

(a) may be granted on conditions that the court considers appropriate; and

(b) has effect for the period specified by the court; and

(c) may be revoked or amended by the court.

(3) The period of a stay specified by the court must not extend past the time when the court decides the appeal.

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[211] Section 77 (Immediate suspension), 78 (Immediate cancellation) or 379 (Chief executive may freeze licensee's accounts in particular cases)

(4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

Hearing procedures

537.(1) The procedure for an appeal to a Magistrates Court under this Act is to be in accordance with—

(a) the rules of court for Magistrates Courts; or

(b) in the absence of relevant rules—directions of a Magistrates Court.

(2) An appeal is to be by way of rehearing, unaffected by the original decision maker's decision.

(3) In deciding an appeal, a Magistrates Court—

(a) is not bound by the rules of evidence; and

(b) must observe natural justice; and

(c) may hear the appeal in court or chambers.

Powers of court on appeal

538.(1) In deciding an appeal, a Magistrates Court may—

(a) confirm the decision appealed against; or

(b) set aside the decision and substitute another decision; or

(c) set aside the decision and return the matter to the original decision-maker with directions that the court considers appropriate.

(2) In substituting another decision, the court has the same powers as the original decision-maker.

Example—

The court may decide that an unsuccessful applicant for a licence be granted the licence either unconditionally or on particular conditions.

(3) If the court substitutes another decision, the substituted decision is taken to be the decision of the original decision-maker.

(4) The court may make an order for costs it considers appropriate.

Appeal to District Court on questions of law only

539.(1) An appellant aggrieved by the decision of a Magistrates Court may appeal to a District Court, but only on a question of law.

(2) On hearing the appeal, the court may make the order for costs it considers appropriate.

CHAPTER 16—GENERAL

Register of ineligible persons

540.(1) The chief executive must keep a register of persons who are not eligible to be employed as restricted letting agents (employee), real estate salespersons, pastoral house salespersons, motor salespersons or commercial agents (employee) (**"register of ineligible persons"**).

(2) The chief executive must enter in the register the name, and the other details that may be prescribed under a regulation, of each of the following persons—

(a) a person declared by an agents and motor dealers board to be an ineligible person;

(b) a person declared by a Magistrates Court or another court to be an ineligible person;

(c) a person disqualified from holding a certificate of registration under the repealed Act.

(3) If a person whose name is entered in the register stops being ineligible for employment as a restricted letting agent (employee), real estate salesperson, pastoral house salesperson, motor salesperson or commercial agent (employee), the chief executive must immediately remove the person's name and details from the register.

(4) A person may, on payment of any fee that may be prescribed under a regulation—

(a) request a search of, or for, an entry in the register at the department's head office when it is open to the public; and

(b) obtain a copy of details of the entry.

(5) The register—

(a) may be a mechanical, electronic or other device suitable for containing information or documents; and

(b) may contain information or documents in a physical, electronic, digital or other form.

(6) In this section—

"contain" includes record and store.

Civil remedies not affected

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

Crimes (Confiscation) Act 1989 not limited

542. Nothing in this Act limits the *Crimes (Confiscation) Act 1989*.

Delegation

543.(1) The chief executive may delegate the chief executive's powers to an appropriately qualified officer of the department.

(2) In subsection (1)—

"appropriately qualified" includes having the qualifications, experience or standing appropriate to exercise the power.

Example of 'standing'—

The level at which a person is employed within the department.

Protection from liability

544.(1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to the person, the liability attaches instead to the State.

(3) This section does not limit section 462.[212]

(4) In this section—

"official" means—

(a) the Minister; or

(b) the chief executive; or

(c) an inspector; or

(d) a person acting under the direction of an inspector; or

(e) an officer of the department.

Approval of forms

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

Regulation-making power

546.(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) fees, including the refunding of fees;

(b) imposing a penalty for a contravention of a regulation of not more than 50 penalty units;

(c) the audit of trust accounts and documents;

(d) the keeping or destruction of motor vehicle identifiers, including, for example, compliance plates;

(e) 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;

(f) the financial or insurance protection requirements for del credere agents;

(g) imposing limits on out-of-pocket expenses incurred in the

[212] Section 462 (Chief executive not liable for payments from fund)

performance of functions under a licence;

(h) the keeping of records, including the form in which a record is kept;

(i) the keeping of receipts and evidence of expenditure;

(j) the length of time a document required to be kept under this Act is to be kept.

Act amended in sch 2

547. Schedule 2[213] amends the Act mentioned in it.

Act repealed

548. The *Auctioneers and Agents Act 1971* is repealed.

CHAPTER 17—TRANSITIONAL AND SAVINGS

Definitions for ch 17

549. In this chapter—

"commencement" means commencement of this section.

"committee" means the auctioneers and agents committee established under the repealed Act.

"former fund" means the auctioneers and agents fidelity guarantee fund established under the repealed Act.

Former fund

550.(1) On the commencement, an amount held in the former fund immediately before the commencement is taken to be held in the fidelity guarantee fund.

[213] Schedule 2 (Consequential amendments)

(2) The rights and liabilities of the former fund are taken to be the rights and liabilities of the fidelity guarantee fund.

(3) A claim that has been made against the former fund, and not finished before the commencement, continues as if it were a claim against the fidelity guarantee fund under this Act.

(4) If, before the commencement, a person could have made a claim against the former fund but did not make the claim, the person may make the claim against the fidelity guarantee fund under this Act.

(5) If, before the commencement, the committee had started a proceeding to recover an amount paid out of the former fund, the proceeding is taken to have been started by the chief executive as if the amount had been paid out of the fidelity guarantee fund.

(6) If, had the repealed Act not been repealed, the committee could start a proceeding to recover an amount paid out of the former fund, the chief executive may start the proceeding as if the amount had been paid out of the fidelity guarantee fund.

Subrogation of committee

551.(1) This section applies if, immediately before the commencement, the committee was subrogated, to a particular extent, to the rights and remedies of a claimant who claimed against the former fund and whose claim has been settled by payment out of the former fund.

(2) The chief executive is taken to be subrogated, to the same extent, to the claimant's rights and remedies.

(3) An agreement entered into or anything else done by the committee under the subrogation is taken to have been entered into or done by the chief executive.

Existing pastoral house employees and registered commercial subagents and salespersons

552.(1) This section applies to—

(a) a person who is employed by a licensee under the repealed Act and who—

(i) immediately before the commencement, held a certificate of registration as a real estate salesperson, motor salesperson or commercial subagent under the repealed Act; or

(ii) had the repealed Act not been repealed, would have been entitled to apply for restoration of the person's registration as a real estate salesperson, motor salesperson or commercial subagent under the repealed Act within 3 months after the commencement and the registration would have been restored; or

(b) a person who is employed immediately before the commencement by a pastoral house corporation licensee under the repealed Act.

(2) A person mentioned in column 1 of the following table is taken to be employed as a person mentioned in column 2 of the table opposite the column 1 person—

Table

column 1	**column 2**
real estate salesperson	real estate salesperson or restricted letting agent (employee)
motor salesperson	motor salesperson
commercial subagent	commercial agent (employee)
pastoral house salesperson	pastoral house salesperson.

(3) The person is taken to be eligible for employment while the employment continues.

(4) Section 89, 113, 161, 263 or 313[214] of this Act does not apply to the person's employer while the person's employment continues with the employer.

[214] Section 89 (Employment as restricted letting agent (employee)), 113 (Employment as real estate salespersons), 161 (Employment as pastoral house salespersons), 263 (Employment as motor salespersons) or 313 (Employment as commercial agent (employee))

Existing substitute licensees

553.(1) This section applies to a substitute licensee whose appointment as a substitute licensee was approved before the commencement.

(2) The appointment is taken to have been made under this Act and to be subject to the same conditions as the conditions on which it was made under the repealed Act.

Existing licences

554.(1) This section applies to a person who, immediately before the commencement held a licence mentioned in column 1 of the following table (a **"column 1 licence"**)—

Table

column 1	column 2
commercial agent's licence	agents and motor dealers licence (commercial agent)
corporation licence (with a director holding a real estate agent's licence)	agents and motor dealers licence (real estate)
corporation licence (with a director holding a restricted real estate agent's licence)	agents and motor dealers licence (restricted letting agent)
corporation licence (with a director holding a general auctioneer's licence)	agents and motor dealers licence (auctioneer)
corporation licence (with a director holding a restricted auctioneer's licence)	agents and motor dealers licence (auctioneer)
corporation licence (with a director holding a commercial agent's licence)	agents and motor dealers licence (commercial agent)
corporation licence (with a director holding a motor dealer's licence)	agents and motor dealers licence (motor dealer)
general auctioneer's licence	agents and motor dealers licence (auctioneer)

manager's (commercial agency) licence	agents and motor dealers licence (commercial agent)
manager's (motor dealing) licence	agents and motor dealers licence (motor dealer)
manager's (real estate agency) licence	agents and motor dealers licence (real estate)
motor dealer's licence	agents and motor dealers licence (motor dealer)
pastoral house auctioneer's licence	agents and motor dealers licence (pastoral house auctioneer)
pastoral house corporation licence	agents and motor dealers licence (pastoral house)
pastoral house director's licence	agents and motor dealers licence (pastoral house director)
pastoral house manager's licence	agents and motor dealers licence (pastoral house manager)
provisional auctioneer's licence	agents and motor dealers licence (trainee auctioneer)
real estate agent's licence	agents and motor dealers licence (real estate)
restricted auctioneer's licence	agents and motor dealers licence (auctioneer)
restricted real estate agent's licence	agents and motor dealers licence (restricted letting agent)

(2) The person is taken to be—

(a) a suitable and eligible person to hold a licence mentioned in column 2 of the table (a **"column 2 licence"**) shown opposite the column 1 licence; and

(b) to be the holder of the column 2 licence.

(3) If the licence held by the person immediately before the commencement was subject to a condition, the licence the person is taken to hold after the commencement is also taken to be subject to the condition.

(4) If, apart from subsection (2)(a), the person would, on the commencement, not have been suitable to hold the column 2 licence because of a matter or event that happened before the person's licence was last granted, renewed or restored, the matter or event may be disregarded for the purposes of renewal or restoration of the licence after the commencement.

Existing applications

555.(1) An application made under the repealed Act and not decided on the commencement must be decided under this Act.

(2) If the application is about a column 1 licence, the application is taken to be about a column 2 licence shown opposite the column 1 licence.

(3) Subject to subsection (4), if the application is about the issue, renewal or restoration of a licence, the provisions of this Act about issuing, renewing, or restoring licences apply to the application.

Examples of provisions that apply to the application—

- section 22 (Applicant must advertise intention to apply for licence)
- section 23 (Application for licence).

(4) The provisions of this Act dealing with making the application in the approved form and paying the application fee do not apply to the application.

Existing objections

556.(1) This section applies if an application for the grant, renewal or restoration of a licence has been made, but not decided, under the repealed Act.

(2) An objection about the grant, renewal or restoration made under the repealed Act with or without the Minister's approval before the commencement is taken to have been made about the issue, renewal or restoration of the licence under this Act.

(3) The chief executive must have regard to the objection when considering the application.

Existing exemptions

557.(1) If, immediately before the commencement, a person was exempted from a provision of the repealed Act for which there is an equivalent provision under this Act, the person is taken to be exempted from the equivalent provision under this Act.

(2) If the exemption under the repealed Act was subject to a condition, the exemption from the equivalent provision under this Act is also taken to be subject to the condition.

Existing approved financial institutions

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

Existing agreements with financial institutions

559.(1) This section applies to an agreement entered into between the registrar and an approved financial institution under the repealed Act about the keeping of general trust accounts by licensees.

(2) The agreement is taken to be an agreement entered into between the chief executive and a financial institution about the keeping of general trust accounts by licensees under this Act.

(3) References in the agreement to the registrar are taken to be references to the chief executive.

Existing trust accounts

560. A general trust account or special trust account opened under the former Act is taken to have been opened under this Act.

Existing agreements entered into by committee

561.(1) This section applies to an agreement entered into, under the repealed Act, between the committee and another entity and in force immediately before the commencement.

(2) The agreement is taken to be an agreement entered into between the chief executive and the other entity under this Act.

(3) References in the agreement to the registrar or committee are taken to be references to the chief executive or, if the context permits, to an agents and motor dealers board.

Existing auditors

562.(1) This section applies to an auditor appointed by a licensee or applicant for a licence under the repealed Act whose appointment is in force immediately before the commencement.

(2) The auditor is taken to be appointed by the principal licensee under this Act on the same conditions as the appointment under the repealed Act.

(3) If the auditor was appointed by the Minister under the repealed Act, section 124,[215] the auditor is taken to be approved by the chief executive under section 359[216] to audit the principal licensee's trust accounts.

Existing receivers appointed by committee

563.(1) A receiver of property appointed by the committee under the repealed Act is taken to be a receiver appointed over the property by the chief executive under this Act.

(2) If the receiver appointed by the committee is in possession of the property immediately before the commencement, the receiver is taken to be in possession of the property under this Act.

Registrar's or deputy registrar's acts and decisions

564.(1) This section applies to an act done or decision made by the registrar, or a deputy registrar, of auctioneers and agents under the repealed Act that may be done lawfully by the chief executive under this Act.

(2) The act or decision is taken to have been done or made by the chief executive under this Act.

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[215] Section 124 (Remote localities)

[216] Section 359 (Chief executive to consider application)

Continuation of restriction on licensee's remedy for commission etc.

565.(1) If, before the commencement, a licensee under the repealed Act was engaged or appointed for a particular transaction—

(a) section 76 of that Act continues to apply to the licensee in relation to the engagement or appointment; and

(b) if the licensee wants to sue for, or recover or retain, a fee, charge or commission payable under the engagement or appointment, the licensee must do so under the repealed Act as if it had not been repealed.

(2) However, subsection (1) does not apply if the licensee and the person with whom the licensee entered into the engagement or appointment decide otherwise by written agreement after the commencement.

Disciplinary action

566.(1) If the committee had started, but not finished, disciplinary action under the repealed Act before the commencement, the action may be finished under that Act as if that Act had not been repealed and an agents and motor dealers board were the committee.

(2) However, if the committee had started, but not finished, hearing a disciplinary proceeding under the repealed Act before the commencement, the disciplinary proceeding must be reheard under that Act as if that Act had not been repealed and an agents and motor dealers board were the committee.

Appeals

567.(1) If—

(a) a person had appealed to a District Court under the repealed Act before the commencement against a decision of the committee; and

(b) the appeal had not been decided before the commencement;

the District Court may hear, or continue to hear, and decide the appeal under that Act as if it had not been repealed.

(2) If—

(a) a person could have appealed to a District Court under the repealed Act before the commencement against a decision of the committee; and

(b) the person had not appealed before the commencement;

the person may appeal under that Act as if it had not been repealed.

(3) For the purpose of an appeal mentioned in subsection (1) or (2), a decision of the committee is taken to be—

(a) for a decision of a kind that, under this Act, must be made by the chief executive—a decision of the chief executive; or

(b) for a decision of a kind that, under this Act, must be made by an agents and motor dealers board—a decision of the board; or

(c) for a decision of a kind that, under this Act, may be made by the registrar—a decision of an agents and motor dealers board.

Legal proceedings by or against committee

568.(1) A legal proceeding by or against the committee that has not been finished before the commencement may be continued and finished by or against the chief executive.

(2) If, because of an event that happened before the commencement, a legal proceeding could have been started by or against the committee, the legal proceeding may be started by or against the chief executive.

References to repealed Act

569. In an Act or document, a reference to the repealed Act may, if the context permits, be taken as a reference to this Act.

References to former fund

570. In an Act or document, a reference to the former fund may, if the context permits, be taken as a reference to the fidelity guarantee fund.

SCHEDULE 1

DECISIONS UNDER PROVISIONS THAT ARE SUBJECT TO APPEAL

sections 532 and 534

PART 1—DECISIONS OF THE CHIEF EXECUTIVE

section 29	(Chief executive must consider suitability of applicants and licensees)
section 51	(Chief executive may issue or refuse to issue licence)
section 54	(Licences—conditions)
section 60	(Chief executive may renew or refuse to renew licence)
section 64	(Chief executive may restore or refuse to restore licence)
section 69	(Chief executive may appoint or refuse to appoint substitute licensee)
section 73	(Amendment of licence conditions)
section 76	(Licence may be deactivated)
section 82	(Replacement licences)
section 359	(Chief executive to consider application)
section 363	(Chief executive may withdraw approval as approved auditor)
section 379	(Chief executive may freeze licensee’s accounts in particular cases)

PART 2—DECISIONS OF AN AGENTS AND MOTOR DEALERS BOARD

section 453	(Deciding claims without a hearing—agents and motor dealers board)
section 479	(Orders agents and motor dealers board may make on fee review hearing)
section 480	(Orders agents and motor dealers board may make on disciplinary charge hearing)
section 481	(Orders agents and motor dealers board may make on claim hearing)

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS

section 547

SMALL CLAIMS TRIBUNALS ACT 1973

1. Section 4(1), definition "claimant", paragraph (a), '(f)'—

omit, insert—

'(g)'.

2. Section 4(1), definition "claimant"—

insert—

'(g) in relation to a claim for repair of a defect in a motor vehicle under the *Agents and Motor Dealers Act 1997*—the buyer of the vehicle;'.

3. Section 4(1), definition "small claim"—

insert—

'(b) a claim for repair of a defect in a motor vehicle under the *Agents and Motor Dealers Act 1997,* section 293;[217] or'.

4. Section 14(2)(d), after 'tenancy application'—

insert—

'or a claim for repair of a defect in a motor vehicle under the *Agents and Motor Dealers Act 1997*'.

[217] Section 293 (Seller's failure to repair)

5. Section 16(2), '(f)'—

omit, insert—

'(g)'.

6. Section 21(2), after 'tenancy application'—

insert—

'or a claim for repair of a defect in a motor vehicle under the *Agents and Motor Dealers Act 1997*, section 293[218]'.

[218] Section 293 (Seller's failure to repair)

SCHEDULE 3

DICTIONARY

section 13

“account”, for chapter 9, part 4, see section 378.

“agents and motor dealers board” see section 424.

“agents and motor dealers licence” means an agents and motor dealers licence issued under this Act.

“approved financial institution” means a financial institution that—

(a) has been prescribed under a regulation to be a financial institution to which section 376 applies; and

(b) has entered into an agreement under the section.

“approved form”, for a purpose, means a form approved by the chief executive for the purpose under section 545.

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

“associate”, of a person, means a spouse, de facto spouse, parent, brother, sister, child or step-child of the person, or a child or step-child of the person’s spouse or defacto spouse.

“auctioneer”—

(a) generally, see section 203; and

(b) for chapter 6, part 4, see section 235.

“auctioneer’s licence” means an agents and motor dealers licence (auctioneer).

“audit month”, for chapter 9, part 2, division 3, see section 365.

“audit period”, for chapter 9, part 2, division 3, see section 365.

“audit report”, for chapter 9, part 2, division 3, see section 365.

“auditor” see section 356.

“beneficial interest” see section 15.

“body corporate” means—

(a) a body corporate under the *Building Units and Group Titles Act 1980*; or

(b) a body corporate for a leasehold building units plan under the *South Bank Corporation Act 1989*; or

(c) a body corporate for a basic community titles scheme under the *Body Corporate and Community Management Act 1997*.

“building complex” means—

(a) a building on a single building units plan under the *Building Units and Group Titles Act 1980*; or

(b) a building or buildings on a single group title plan under the *Building Units and Group Titles Act 1980*; or

(c) a building or buildings shown on a single leasehold building units plan under the *South Bank Corporation Act 1989*; or

(d) a building or buildings on scheme land in a single community titles scheme or a layered arrangement of community title schemes under the *Body Corporate and Community Management Act 1997*.

“business day”—

(a) for chapter 6, part 4—see section 235.

(b) for chapter 7, part 5—see section 281.

“business of letting” includes the collecting or receiving of rents by an agent for a principal, whether or not the agent has let the house, land, estate or business concerned.

“caravan” means a trailer fitted, equipped, or used principally for camping or as a dwelling or for carrying on any trade or business.

“commencement”, for chapter 17, see section 549.

“commercial agent” see section 309.

“commercial agent (employee)” see section 311.

"commercial agent's licence" means an agents and motor dealers licence (commercial agent).

"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 1 t or less.

"committee", for chapter 17, see section 549.

"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 auctioneer and the appointing of the motor dealer or auctioneer as an agent to sell the vehicle for the vehicle's owner.

"contract"—

(a) for chapter 4, part 3, division 5, see section 131; and

(b) for chapter 5, part 3, division 5, see section 179; and

(c) for chapter 6, part 3, division 6, see section 220.

"convict" means find guilty, or accept a plea of guilty.

"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.

"court" means a Magistrates Court constituted by a stipendiary magistrate.

"decision-maker", for chapter 11, part 3, see section 443.

"defalcation", for chapter 9, part 4, see section 378.

"defect"—

(a) for chapter 6, part 4, see section 236; and

(b) for chapter 7, part 5, see section 282.

"del credere agent" means a licensee who—

(a) is authorised under the licensee's licence to sell livestock; and

(b) guarantees the payment of the livestock's purchase price to the seller of the livestock.

"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 functions of a licensee as the employee of someone else.

"employment register"—

(a) of a restricted letting agent, see section 104;

(b) of a real estate agent, see section 148;

(c) of a pastoral house, see section 194;

(d) of a motor dealer, see section 299;

(e) of a commercial agent, see section 329.

"exclusive agency" see section 19.

"executive officer", for 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.

"false or misleading" statement or representation includes the wilful concealment of a material fact.

"fee", for chapter 11, part 1, see section 431.

"fidelity guarantee fund" see section 373.

"financier" means a corporation whose ordinary business (whether or not it carries on any other business) is providing credit and that does not carry on the business of dealing with motor vehicles except only for 1 or more of the following purposes—

(a) selling motor vehicles on instalment terms;

(b) hiring motor vehicles under hire-purchase agreements;

(c) effectuating or enforcing securities over motor vehicles;

(d) hiring motor vehicles, if no right to purchase a motor vehicle is included in the hiring of the vehicle;

(e) disposing of motor vehicles acquired by it in connection with a purpose mentioned in paragraphs (a) to (d).

"former fund", for chapter 17, see section 549.

“former licensee”—

(a) for chapter 11, part 1, see section 431; and

(b) elsewhere, means a person who held a licence under this or the repealed Act.

“former salesperson”, for chapter 11, part 2, see section 437.

“fund” means the fidelity guarantee fund.

“GOC” means a government owned corporation under the *Government Owned Corporations Act 1993.*

“holder”, of an account, see section 378.

“holder”, of an agents and motor dealers licence, means the person in whose name the licence is issued.

“in charge” see section 16.

“information notice”, for a decision of the chief executive, is a written notice stating—

(a) the decision; and

(b) the reasons for the decision; and

(c) that the person to whom the notice is given may appeal against the decision to a Magistrates Court within 28 days.

“land” includes—

(a) a lot shown on—

(i) a building units plan registered or to be registered under the *Building Units and Group Titles Act 1980*; or

(ii) a leasehold building units plan registered or to be registered under the *South Bank Corporation Act 1989*; and

(b) land under the *South Bank Corporation Act 1989.*[219]

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[219] The *South Bank Corporation Act 1989*, section 4 defines land to include—
(a) any estate in, on, over or under land; and
(b) the airspace above the surface of land and any estate in the airspace; and
(c) the subsoil of land and any estate in the subsoil; and
(d) a building; and
(e) a stratum lot.

“letting” includes every form of leasing or letting of houses, land, estates, or businesses.

“licence” means an agents and motor dealers licence.

“licensee”—

(a) generally, means the holder of an agents and motor dealers licence that is in force; and

(b) for chapter 9, part 4, see section 378; and

(c) for chapter 11, part 2, see section 437; and

(d) for chapter 11, part 3, see section 443.

“livestock” means horses, mares, fillies, foals, geldings, colts, bulls, bullocks, cows, heifers, steers, calves, ewes, wethers, rams, lambs and swine.

“minor claim”, for chapter 11, part 3, see section 443.

“misleading” includes deceptive.

“money”, for chapter 9, part 4, see section 378.

“motor dealer”—

(a) generally, see section 259; and

(b) for chapter 7, part 5, see section 281.

“motor dealer’s licence” means an agents and motor dealers licence (motor dealer).

“motor salesperson” see section 261.

“motor vehicle” see section 17.

“obstruct” includes hinder, delay and attempt to obstruct.

“obtain”—

(a) for chapter 4, part 3, division 4, see section 126; and

(b) for chapter 5, part 3, division 4, see section 174; and

(c) for chapter 6, part 3, division 5, see section 215; and

(d) for chapter 7, part 3, division 4, see section 274.

“open listing” see section 18.

“option to purchase” includes a transaction granting or purporting to grant a right not immediately exercisable to purchase or to be given an option to purchase.

“pastoral house” see section 154.

“pastoral house auctioneer” see section 157.

“pastoral house auctioneer’s licence” means an agents and motor dealers licence (pastoral house auctioneer).

“pastoral house director” see section 155.

“pastoral house director’s licence” means an agents and motor dealers licence (pastoral house director).

“pastoral house licence” means an agents and motor dealers licence (pastoral house).

“pastoral house manager” see section 156.

“pastoral house manager’s licence” means an agents and motor dealers licence (pastoral house manager).

“pastoral house officer”, of a pastoral house, means—

(a) an executive officer of the pastoral house; or

(b) a pastoral house manager of the pastoral house; or

(c) a pastoral house auctioneer of the pastoral house; or

(d) a pastoral house salesperson of the pastoral house.

“pastoral house salesperson” see section 159.

“principal licensee” means—

(a) if the licensee is an individual—a licensee who carries on business on the licensee’s own behalf; or

(b) if the licensee is a corporation—the corporation.

“property”, for chapter 9, part 4, see section 378.

“providing credit” means—

(a) the making of loans; or

(b) the hiring under hire-purchase agreements of motor vehicles bought or taken in exchange from or with—

(i) licensed motor dealers; or

(ii) financiers; or

(iii) persons not being licensed dealers or financiers in circumstances which do not constitute the person so buying or taking motor vehicles in exchange a dealer; or

(c) the giving of guarantees, indemnities or bonds; or

(d) the endorsing or accepting of bills of exchange; or

(e) the hiring of motor vehicles where the right to purchase the motor vehicle is not included in that hiring or the sale on instalment terms.

“real estate agent” see section 109.

“real estate agent’s licence” means an agents and motor dealers licence (real estate agent).

“real estate salesperson” see section 111.

“receivership property”, for chapter 9, part 4, see section 378.

“register of ineligible persons” see section 540.

“registered office”—

(a) of a restricted letting agent, see section 101;

(b) of a real estate agent, see section 145;

(c) of a pastoral house, pastoral house director, pastoral house manager or pastoral house auctioneer, see section 191;

(d) of an auctioneer, see section 249;

(e) of a trainee auctioneer, see section 252;

(f) of a motor dealer, see section 295;

(g) of a commercial agent, see section 326.

“registrar” means the registrar of agents and motor dealers boards appointed under section 429.

“relevant person”, for chapter 11, part 3, see section 443.

“repealed Act” means the *Auctioneers and Agents Act 1971*.

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

“restricted letting agent” see section 85.

“restricted letting agent (employee)” see section 87.

“restricted letting agent’s licence” means an agents and motor dealers licence (restricted letting agent).

“reward” includes fee, gain and other remuneration.

“rural land” means land used for grazing stock or cultivating crops on a commercial basis.

“sale by auction” means the sale of property by outcry, knocking down of hammer, or in another way under which the highest or any bidder is the buyer, or under which there is a competition for the purchase of the property in any way commonly known and understood to be by way of auction.

“salesperson”, for chapter 11, part 2, see section 437.

“security interest certificate” means a security interest certificate under the *Motor Vehicles Securities Act 1986*.

“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.

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

(a) an offence involving fraud or dishonesty;

(b) an offence involving the trafficking of drugs;

(c) an offence involving the use or threatened use of violence;

(d) an offence of a sexual nature;

(e) extortion;

(f) arson;

(g) unlawful stalking;

(h) another offence prescribed under a regulation.

“sole agency” see section 19.

“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.

“statutory warranty”—

(a) for chapter 6, part 4, see section 235; and

(b) for chapter 7, part 5, see section 281.

“suitable person”—

(a) for an individual—see section 27; and

(b) for a corporation—see section 28.

“trainee auctioneer” see section 204.

“trainee auctioneer’s licence” means an agents and motor dealers licence (trainee auctioneer).

“transactions register” see section 300.

“trust account”, for chapter 9, part 2, division 3, see section 365.

“trust money”, for chapter 9, part 4, see section 378.

“used motor vehicle” means a motor vehicle that has, at any time, been licensed or registered, whether under the law of this State or of any other State or a foreign country.

“vacant land”—

(a) for chapter 4, part 3, division 6, see section 136; and

(b) for chapter 5, part 3, division 6, see section 184; and

(c) for chapter 6, part 3, division 7, see section 225.

“warranty period”—

(a) for chapter 6, part 4, see section 235; and

(b) for chapter 7, part 5, see section 281.

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