

Queensland



**PROPERTY AGENTS AND
MOTOR DEALERS
AMENDMENT BILL 2001**



PROPERTY AGENTS AND MOTOR DEALERS AMENDMENT BILL 2001

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A BILL

FOR

An Act to amend the Property Agents and Motor Dealers Act 2000

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The Parliament of Queensland enacts—

1

Clause 1 Short title

2

This Act may be cited as the *Property Agents and Motor Dealers Amendment Act 2001*.

3

4

Clause 2 Commencement

5

Sections 11 to 19 commence on a day to be fixed by proclamation.

6

Clause 3 Act amended

7

This Act amends the *Property Agents and Motor Dealers Act 2000*.

8

Clause 4 Amendment of title

9

Title, after ‘employees,’—

10

insert—

11

‘to protect consumers against particular undesirable practices,’.

12

Clause 5 Replacement of ch 1, pt 2, hdg

13

Chapter 1, part 2, heading—

14

omit, insert—

15

‘PART 2—OBJECTS’.

16

Clause 6 Amendment of s 10 (Object)

17

(1) Section 10, heading, ‘Object’—

18

omit, insert—

19

‘Objects’.

20

(2) Section 10(2), ‘The object is’—

21

omit, insert—

22

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‘The objects are’.	1
(3) Section 10(2)(f), ‘and undertakings’—	2
<i>omit, insert—</i>	3
‘, undertakings, and, for contraventions by marketeers, preservation of assets and civil penalties’.	4
	5
(4) Section 10(2)—	6
<i>insert—</i>	7
‘(ca) providing protection for consumers in their dealings with marketeers; and’.	8
	9
(5) Section 10(2)—	10
<i>insert—</i>	11
‘(ea) providing for the enforcement of matters involving marketeers by the tribunal and the District Court; and’.	12
	13
(6) Section 10(2)(a) to (f), as amended—	14
<i>renumber</i> as section 10(3)(a) to (h).	15
(7) Section 10—	16
<i>insert—</i>	17
‘(2) Another significant object of this Act is to provide a way of protecting consumers against particular undesirable practices associated with the promotion of residential property.’.	18
	19
	20
Clause 7 Amendment of s 28 (Chief executive must consider suitability of applicants and licensees)	21
	22
(1) Section 28(1)(f) to (h)—	23
<i>renumber</i> as section 28(1)(g) to (i).	24
(2) Section 28(1)—	25
<i>insert—</i>	26
‘(f) whether, within the previous 5 years, the tribunal or the District Court has made an order under this Act against the person because of the person’s involvement as a marketeer of residential property;’.	27
	28
	29
	30

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Clause 8	Amendment of s 74 (Immediate suspension)	1
	Section 74(1)—	2
	<i>insert—</i>	3
	‘(c) the chief executive considers, on reasonable grounds, that a licensee—	4
	(i) has contravened or is contravening this Act; or	5
	(ii) is likely or proposing to engage in conduct that would contravene this Act.’.	6
		7
		8
Clause 9	Amendment of s 86 (Chief executive must consider suitability of applicants)	9
	(1) Section 86(1)(e) to (j)—	10
	<i>renumber</i> as section 86(1)(f) to (k).	11
	(2) Section 86(1)—	12
	<i>insert—</i>	13
	‘(e) whether, within the previous 5 years, the tribunal or the District Court has made an order under this Act against the person because of the person’s involvement as a marketeer of residential property;’.	14
		15
		16
		17
		18
Clause 10	Amendment of s 104 (Immediate suspension)	19
	Section 104(1)(a) and (b)—	20
	<i>omit, insert—</i>	21
	‘(a) both—	22
	(i) an irregularity or deficiency exists in a licensee’s trust account; and	23
	(ii) a registered employee of the licensee may be responsible for the irregularity or deficiency; or	24
	(b) a registered employee—	25
	(i) has contravened or is contravening this Act; or	26
		27
		28

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- (ii) is likely or proposing to engage in conduct that would
contravene this Act.’. 1
2

Clause 11 Amendment of s 138 (Disclosures to prospective buyer) 3

(1) Section 138(1), ‘real estate agent or a real estate salesperson acting
for the agent in’— 4
5

omit, insert— 6

‘residential property agent for’. 7

(2) Section 138(1)— 8

insert— 9

‘(c) the amount, value or nature of any benefit any person has
received, receives, or expects to receive in connection with the
sale, or for promoting the sale, or for providing a service in
connection with the sale, of the property. 10
11
12
13

Examples for paragraph (c) of persons who may receive a benefit— 14

- seller 15
- finance broker 16
- financial adviser 17
- financier 18
- property valuer 19
- solicitor 20
- residential property agent.’. 21

(3) Section 138— 22

insert— 23

‘(3) Also, for subsection (1)(c), disclosure in compliance with the
approved form is sufficient. 24
25

‘(4) In this section— 26

“**benefit**” means monetary or other benefit. 27

“**residential property agent**” means— 28

(a) a real estate agent; or 29

(b) a real estate salesperson acting for the real estate agent; or 30

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- (c) a person acting as a real estate agent in contravention of section 160;¹ or 1
2
- (d) a person acting as a real estate salesperson in contravention of section 161.². 3
4

Clause 12	Amendment of s 268 (Disclosures to prospective buyer)	5
	(1) Section 268, ‘property developer’—	6
	<i>omit, insert—</i>	7
	‘residential property developer’.	8
	(2) Section 268(1)—	9
	<i>insert—</i>	10
	‘(d) the amount, value or nature of any benefit any person has received, receives, or expects to receive in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property.	11 12 13 14
	<i>Examples for paragraph (d) of persons who may receive a benefit—</i>	15
	• seller	16
	• finance broker.	17
	• financial adviser.	18
	• financier.	19
	• property valuer.	20
	• solicitor.	21
	• residential property developer.’.	22
	(3) Section 268—	23
	<i>insert—</i>	24
	‘(3) Also, for subsection (1)(d), disclosure in compliance with the approved form is sufficient.	25 26
	‘(4) In this section—	27
	“benefit” means monetary or other benefit.	28

1 Section 160 (Acting as real estate agent)

2 Section 161 (Pretending to be real estate salesperson)

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“residential property developer” means—

- (a) a property developer; or
- (b) a person acting as a property developer in contravention of section 275.³.

Clause 13 Amendment of s 363 (Purposes of ch 11)

Section 363(b)—

omit, insert—

- ‘(b) to require all relevant contracts for the sale of residential property in Queensland to include consumer protection information, including a statement that the contract is subject to a cooling-off period; and
- (c) to enhance consumer protection for buyers of residential property by ensuring, as far as practicable, the independence of lawyers acting for buyers.’.

Clause 14 Amendment of s 364 (Definitions for ch 11)

(1) Section 364, definitions **“contract”**, **“property information session”** and **“relevant contract”**—

omit.

(2) Section 364—

insert—

‘ **“formed on a sale by auction”** means formed on sale by auction—

- (a) directly on the fall of the hammer, by outcry; or
- (b) directly at the end of another similar type of competition for purchase.

Examples—

1. A contract for the sale of property is formed on a sale by auction when the auctioneer declares the property sold on the fall of the hammer.

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2. A contract for the sale of property is not formed on a sale by auction when the property is passed in at auction and a bidder subsequently negotiates and purchases the property.

“relevant contract” means a contract for the sale of residential property in Queensland, other than a contract formed on a sale by auction.’.

Clause 15 Insertion of new ss 365A and 365B

Chapter 11, part 1, after section 365—

insert—

‘365A Buyer to receive copy of property valuation buyer pays for

‘(1) This section applies if, for a relevant contract—

- (a) it is a term of the contract that the buyer must pay for a valuation of the property that, under the contract, is not required to have been given to the buyer before the relevant contract is entered into; or
- (b) the seller or the seller’s agent otherwise requires that the buyer must pay for a valuation of the property that is not required to be given or to have been given to the buyer before the relevant contract is entered into.

‘(2) Despite the term or requirement, the seller or agent commits an offence if the seller or agent fails to give the buyer a copy of the valuation before the relevant contract is entered into.

Maximum penalty—200 penalty units.

‘(3) The term or requirement is effective only if, before the relevant contract is entered into by the buyer, the buyer receives the valuation and, in writing, acknowledges the receipt.

‘(4) Subsection (3) does not affect subsection (2).

‘(5) A contravention of subsection (2) does not affect the validity of the relevant contract.

‘365B Lawyer’s disclosure to buyer about independence

‘(1) This section applies if a buyer or prospective buyer (“**buyer**”) engages a lawyer in relation to the purchase or proposed purchase of a residential property under a relevant contract.

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- ‘(2) The lawyer must give the buyer a lawyer’s certificate in the approved form and explain to the buyer the purpose and nature of the certificate. 1
2
- ‘(3) The lawyer’s certificate must be signed and dated by the lawyer and must state— 3
4
- (a) whether the lawyer is independent of the seller, the seller’s agents and anyone else involved in the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property and whether the lawyer has a business, family or other relationship with any of those persons; and 5
6
7
8
9
 - (b) whether the lawyer has received, is receiving, or expects to receive a benefit in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property, other than professional costs and disbursements payable by the buyer; and 10
11
12
13
14
 - (c) the lawyer has explained to the buyer the purpose and nature of the certificate. 15
16
- ‘(4) In this section— 17
- “benefit” means monetary or other benefit.’. 18

- Clause 16 Amendment of s 366 (Warning statement to be attached to contract)** 19
20
- (1) Section 366, heading, ‘**contract**’— 21
omit, insert— 22
‘**relevant contract**’. 23
- (2) Section 366(1) and (2), from ‘contract’ to ‘Queensland’— 24
omit, insert— 25
‘relevant contract’. 26
- (3) Section 366(1), ‘or (4)’— 27
omit. 28
- (4) Section 366(3)(f)— 29
renumber as section 366(3)(g). 30
- (5) Section 366(3)— 31

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insert—

‘(f) a recommendation that the buyer seek an independent valuation of the property before the cooling-off period ends;’.

(6) Section 366(4) and (5)—

omit, insert—

‘**(4)** A statement purporting to be a warning statement is of no effect unless—

(a) before the contract is signed by the buyer, the statement is signed and dated before a witness by the buyer; and

(b) the words on the statement are presented in substantially the same way as the words are presented on the approved form.

Example for paragraph (b)—

If words on the approved form are presented in 14 point font, the words on the warning statement must also be presented in 14 point font.’.

Clause 17 Amendment of s 367 (Buyer’s rights if warning statement not given)

Section 367(2), ‘366(5)’—

omit, insert—

‘366(4)’.

Clause 18 Amendment of s 369 (Waiving cooling-off period)

Section 369(3)—

omit, insert—

‘**(3)** The lawyer’s certificate must be signed and dated by the lawyer giving the certificate and confirm the following by stating—

(a) the lawyer is independent of the seller, the seller’s agents and anyone else involved in the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property and has no business, family or other relationship with any of those persons;

(b) the lawyer has not received, is not receiving, or does not expect to receive a benefit in connection with the sale, or for promoting

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the sale, or for providing a service in connection with the sale, of
the property, other than professional costs and disbursements
payable by the buyer;

(c) the lawyer has explained to the buyer—

(i) the effect of the contract; and

(ii) the purpose and nature of the certificate; and

(iii) the legal effect of the buyer giving the certificate to the
seller or the seller's agent.

‘(4) In this section—

“benefit” means monetary or other benefit.’.

Clause 19 Amendment of s 370 (Shortening cooling-off period)

(1) Section 370(2)—

omit, insert—

‘(2) The lawyer's certificate must be signed and dated by the lawyer
giving the certificate and confirm the following by stating—

(a) the lawyer is independent of the seller, the seller's agents and
anyone else involved in the sale, or promotion of the sale, or
provision of a service in connection with the sale, of the property
and has no business, family or other relationship with any of
those persons;

(b) the lawyer has not received, is not receiving, or does not expect
to receive a benefit in connection with the sale, or for promoting
the sale, or for providing a service in connection with the sale, of
the property, other than professional costs and disbursements
payable by the buyer;

(c) the lawyer has explained to the buyer—

(i) the effect of the contract; and

(ii) the purpose and nature of the certificate; and

(iii) the legal effect of the buyer giving the certificate to the
seller or the seller's agent.’.

(2) Section 370—

insert—

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‘(4) In this section—1
“benefit” means monetary or other benefit.’.2

Clause 20 Amendment of s 450 (Jurisdiction)3

(1) Section 450(c) and (d)—4

renumber as section 450(d) and (e).5

(2) Section 450—6

insert—7

‘(c) to hear and decide applications under this Act relating to
 marketeers;’.8
9

Clause 21 Amendment of s 469 (Definitions for ch 14)10

(1) Section 469, definition **“complaint”**—11

omit.12

(2) Section 469—13

insert—14

‘ **“complaint”**—15

(a) for a disciplinary proceeding—see section 497(1);⁴16

(b) for a marketeer proceeding—see section 500B(1).⁵.17

Clause 22 Amendment of s 470 (Claims)18

Section 470(1)(a)—19

insert—20

- section 573A⁶21

4 Section 497 (How to start disciplinary proceedings)

5 Section 500B (How to start a proceeding)

6 Section 573A (Misleading conduct)

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- section 573B⁷ 1
- section 573C⁸. 2

Clause 23	Amendment of s 488 (Deciding claims other than minor claims)	3
	Section 488(3)(a)—	4
	<i>omit, insert</i> —	5
	‘(a) take into account—	6
	(i) any amount the claimant might reasonably have received or	7
	recovered if not for the claimant’s neglect or default; and	8
	(ii) any amount ordered to be paid to the claimant as	9
	compensation under section 530A, 572D or 592A; ⁹ and’.	10

Clause 24	Insertion of new ch 14, pt 3A	11
	Chapter 14—	12
	<i>insert</i> —	13

‘PART 3A—MARKETEER PROCEEDINGS 14

‘500A Grounds for starting marketeer proceeding 15

‘The following are grounds for starting a proceeding against a marketeer	16
for orders under section 530A (“ marketeer proceeding ”)—	17
(a) the marketeer has contravened or is contravening section 573A,	18
573B or 573C; ¹⁰	19
(b) the marketeer is likely or proposing to engage in conduct that	20
would contravene section 573A, 573B or 573C;	21

7 Section 573B (Unconscionable conduct)

8 Section 573C (False representations and other misleading conduct in relation to residential property)

9 Section 530A (Orders tribunal may make in a marketeer proceeding), 572D (Orders District Court may make) or 592A (Power of court for particular offences)

10 Section 573A (Misleading conduct), 573B (Unconscionable conduct) or 573C (False representations and other misleading conduct in relation to residential property)

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(c) the marketeer is reasonably suspected of anything mentioned in paragraph (a) or (b).	1 2
‘500B How to start a proceeding	3
‘(1) A marketeer proceeding is started by the chief executive filing with the registrar a statement in the approved form (“ complaint ”) stating—	4 5
(a) the grounds for starting the proceeding; and	6
(b) the conduct constituting the grounds; and	7
(c) that an application will be made for orders under section 530A.	8
‘(2) The registrar must fix a day for the hearing of the complaint (“ hearing date ”) and issue a notice in the approved form (“ attendance notice ”) requiring the marketeer to attend before the tribunal.	9 10 11
‘(3) The chief executive must give a copy of the complaint and attendance notice to the marketeer at least 7 days before the day fixed for the hearing.	12 13 14
‘(4) The complaint and attendance notice may be combined in 1 notice.	15
‘500C When proceeding is taken to start	16
‘A marketeer proceeding is taken to start on the day the marketeer is given the complaint and attendance notice.	17 18
‘500D Fourteen days must pass before hearing date	19
‘The hearing date must be a day at least 14 days after the proceeding starts.	20 21
‘500E Amendment of complaint	22
‘(1) The tribunal may at any stage of the proceeding amend the particulars of the complaint if the tribunal considers the amendment is appropriate in all the circumstances.	23 24 25
‘(2) The particulars of the complaint may be amended—	26
(a) on the chief executive’s application; or	27

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(b) on the tribunal's own initiative.

‘(3) The amended complaint is taken to be the complaint.’.

Clause 25 Amendment of s 506 (Constitution of tribunal for hearing)

Section 506—

insert—

‘(3) Also, for a marketeer proceeding, the tribunal must be constituted by the chairperson or another member who is a lawyer sitting alone.¹¹’.

Clause 26 Amendment of s 508 (Way tribunal is to conduct proceedings)

(1) Section 508(4)—

renumber as section 508(5).

(2) Section 508—

insert—

‘(4) To remove doubt, it is declared that the tribunal's decisions are to be made on the balance of probabilities.’.

Clause 27 Amendment of s 525 (Punishment of contempt)

Section 525(9)—

omit, insert—

‘(9) The *Uniform Civil Procedure Rules 1999*, so far as they relate to the enforcement of non-money orders, apply with necessary changes to the court's investigation, hearing and power to punish.’.

Clause 28 Insertion of new ch 14, pt 5, divs 6A and 6B

After section 528—

insert—

¹¹ See chapter 14 (Claims against the fund and other proceedings), part 3A (Marketeer proceedings)

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‘Division 6A—Public examinations

‘528A Tribunal may conduct public examination

‘(1) The tribunal may, on the chief executive’s application, conduct a public examination that investigates the conduct of a marketeer to find out whether the marketeer has contravened section 573A, 573B or 573C.¹²

‘(2) The application may be made whether or not a marketeer proceeding has been started.

‘(3) This part applies to a public examination as if it were a hearing before the tribunal.

‘528B Procedure before public examination starts

‘(1) Before the start of a public examination, the tribunal must be satisfied each person to be examined has received in writing—

(a) the grounds for the public examination; and

(b) if the application is based on a submission made to the chief executive—a statement of the submission’s substance.

‘(2) On being satisfied under subsection (1), the tribunal must decide a time and place for the public examination.

‘(3) If a person to be examined is a corporation, for the purposes of the public examination, the tribunal may give an attendance notice under section 513 to an executive officer of the corporation to attend the tribunal for examination.¹³

‘(4) The tribunal must give an attendance notice under section 513 to each person to be examined and the chief executive stating—

(a) the time and place for the public examination decided by the tribunal; and

(b) the person may make oral and written submissions at the public examination.

12 Section 573A (Misleading conduct), 573B (Unconscionable conduct) or 573C (False representations and other misleading conduct in relation to residential property)

13 Section 513 (Attendance notice)

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‘Division 6B—Stopping particular conduct

‘528C Stopping particular conduct

‘(1) This section applies if a marketeer proceeding has been started against a marketeer and, on the chief executive’s application, the tribunal is satisfied, or is satisfied there is a reasonable suspicion, that the marketeer—

(a) has contravened or is contravening section 573A, 573B or 573C; or

(b) is likely or proposing to engage in conduct that would contravene section 573A, 573B or 573C.

‘(2) The tribunal may, by order, prohibit the marketeer from engaging in conduct that, alone or together with other conduct, is a contravention of section 573A, 573B or 573C, until the end of the marketeer proceeding.

‘(3) The tribunal may make an order under this section on the chief executive’s application made without notice to the marketeer but, in that case, the tribunal must allow the marketeer a reasonable opportunity to show cause why the order should not be confirmed.

‘(4) If the tribunal, after considering the marketeer’s evidence and representations, if any, and any further evidence or representations of the chief executive, is not satisfied the order should continue in force, the tribunal must cancel the order.

‘(5) A person must not contravene an order under this section.

Maximum penalty—540 penalty units.

‘(6) In a proceeding against a person under this Act, the making of an order under this section is evidence of the facts or circumstances giving rise to the making of the order.

‘(7) An order under this section has effect on the giving of a copy of the order to the marketeer.’.

Clause 29 Insertion of new ss 530A and 530B

Before section 531—

insert—

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‘530A Orders tribunal may make in a marketeer proceeding

‘(1) This section applies if, in a marketeer proceeding, the tribunal is satisfied a marketeer has contravened section 573A, 573B or 573C.

‘(2) The tribunal may make 1 or more of the following orders against the marketeer—

- (a) an order that the person pay to the chief executive, within the time stated in the order, an amount of not more than the money value of—
 - (i) for an individual—200 penalty units; or
 - (ii) for a corporation—1 000 penalty units;
- (b) an order that the person’s licence or registration certificate, if any, be suspended for the period stated in the order;
- (c) an order—
 - (i) if the person is the holder of a licence or registration certificate when the order is made—that the licence or registration certificate be cancelled; or
 - (ii) whether or not the person is the holder of a licence or registration certificate when the order is made—that the person be disqualified, for the period stated in the order, of not more than 5 years, from holding a licence or registration certificate;
- (d) an order that an individual be disqualified, for the period stated in the order, of not more than 5 years, from being an executive officer of any corporation that holds a licence;
- (e) an order imposing conditions on, or amending or revoking the conditions of, the person’s licence or registration certificate, if any;
- (f) an order prohibiting a person from being involved in any way in the business of the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property in Queensland for the period stated in the order, of not more than 5 years;
- (g) an order restricting the way the person conducts the business of the sale, or promotion of the sale, or provision of a service in

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connection with the sale, of residential property in Queensland	1
for the period stated in the order, of not more than 5 years;	2
(h) an order to pay to a person who has suffered financial loss, as	3
compensation, an amount, decided by the tribunal, up to the limit	4
of a Magistrates Court's civil jurisdiction;	5
(i) another order the tribunal considers appropriate to ensure the	6
person complies with this Act.	7
'(3) However, the tribunal may make an order under subsection (2)(a) or	8
(h) against a person who is not licensed or a registered employee only on	9
the basis of evidence, submissions and other information received in	10
accordance with the evidentiary law and practice applicable to a civil	11
proceeding in a Magistrates Court.	12
'(4) If—	13
(a) the tribunal proposes to order a marketeer to pay an amount to	14
the chief executive under subsection (2)(a)(i) and compensation	15
under subsection (2)(h); and	16
(b) the marketeer does not have enough financial resources to pay	17
both;	18
the tribunal must prefer to make an order for compensation.	19
'(5) If—	20
(a) the tribunal orders a corporation to pay an amount to the chief	21
executive under subsection (2)(a)(ii) or compensation under	22
subsection (2)(h); and	23
(b) the corporation does not have enough financial resources to pay	24
either or both;	25
the executive officers of the corporation are jointly and severally liable to	26
pay any amount not paid by the corporation.	27
'(6) It is a defence to a liability under subsection (5) for an executive	28
officer to prove that—	29
(a) if the officer was in a position to influence the conduct of the	30
corporation in relation to the conduct in question—the officer	31
took all reasonable steps to ensure the corporation did not	32
contravene section 573A, 573B or 573C; or	33
(b) the officer was not in a position to influence the conduct of the	34
corporation in relation to the conduct in question.	35

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‘(7) For subsection (6)(a), it is sufficient for the executive officer to prove that the act or omission that was the conduct in question was done or made without the officer’s knowledge despite the officer having taken all reasonable steps to ensure the corporation did not contravene section 573A, 573B or 573C.

‘530B Criteria for deciding amount to be ordered

‘To decide the amount a person may be ordered to pay under section 530A, the tribunal must consider—

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

Clause 30 Amendment of ch 16, hdg

Chapter 16, heading, ‘AND UNDERTAKINGS’—

omit, insert—

‘, UNDERTAKINGS, PRESERVATION OF ASSETS AND CIVIL PENALTIES’.

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Clause 31 Insertion of new ch 16, pts 3 and 4

Chapter 16—

insert—

‘PART 3—PRESERVATION OF ASSETS

‘572A Powers of court for preservation of assets

‘(1) This section applies if any of the following proceedings have been started against a marketeer—

- (a) a proceeding before the District Court for the grant of an injunction;
- (b) a proceeding before the District Court about a contravention of an undertaking;
- (c) a marketeer proceeding;
- (d) a proceeding before the District Court under part 4 for a civil penalty.

‘(2) On the chief executive’s application, the District Court may make an order mentioned in subsection (3) if satisfied that—

- (a) it is necessary or desirable to preserve property held by or for the marketeer because the marketeer is or may become liable under this Act—
 - (i) to pay an amount to the chief executive; or
 - (ii) to pay compensation; or
 - (iii) to refund an amount; or
 - (iv) to transfer, sell or return other property; and
- (b) it will not unduly prejudice the rights and interests of any other person.

‘(3) The orders the court may make are—

- (a) an order prohibiting a person who owes an amount to the marketeer or an associate of the marketeer from paying all or part of the amount to, or to another person at the request of, the marketeer or associate; and

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- (b) an order prohibiting a person holding property for the marketeer or an associate of the marketeer from transferring all or any of the property to, or to another person at the request of, the marketeer or associate; and
- (c) an order prohibiting the taking by any person of the property of the marketeer or an associate of the marketeer out of the State; and
- (d) if the marketeer is an individual—an order appointing, with the powers stated in the order, a receiver or trustee of all or part of the property of the marketeer or an associate of the marketeer.
- ‘(4) Subject to subsection (5), the order may be expressed to operate—
- (a) for a stated period; or
- (b) until proceedings under any other provision of this Act in relation to which the order was made have ended.
- ‘(5) An application and an order may be made under this section without notice to, and in the absence of, the marketeer or the associate, but in that case the order must not be made for a period of more than 30 days.
- ‘(6) A person to whom an order is directed under this section must comply with the order.
- Maximum penalty—540 penalty units.
- ‘(7) In this section—
- “associate”**, of a marketeer, means—
- (a) a person holding property for the marketeer; or
- (b) if the marketeer is a body corporate—a wholly-owned subsidiary of the marketeer.
- “prohibit”** means prohibit absolutely or on conditions.
- “request”** includes direction.
- “take”** includes the following—
- (a) send;
- (b) transfer.
- “transferring”** means transferring, paying or otherwise parting with possession of.

‘PART 4—CIVIL PENALTIES AND COMPENSATION ORDERS FOR PARTICULAR CONTRAVENTIONS

‘572B Application of pt 4

‘This part applies if a person contravenes section 573A, 573B or 573C.¹⁴

‘572C Application for order imposing civil penalties

‘(1) The chief executive may apply to the District Court (“**court**”) for an order requiring the person—

(a) to pay to the State a money penalty; or

(b) to pay to a person who suffered financial loss because of the contravention an amount as compensation.

‘(2) The application may be made together with any other application the chief executive may make under this chapter.

‘572D Orders District Court may make

‘(1) This section applies if the court is satisfied the person has contravened section 573A, 573B or 573C.

‘(2) The court may order the person to pay to the State, as a money penalty, an amount up to the limit of the court’s civil jurisdiction for each contravention.

‘(3) If satisfied another person has suffered financial loss because of the contravention, the court may order the person to pay to the other person, as compensation, an amount, decided by the court, up to the limit of the court’s civil jurisdiction.

‘(4) If—

(a) the court proposes to order an individual to pay a money penalty under subsection (2) and compensation under subsection (3); and

(b) the person does not have the resources to pay both;

¹⁴ Section 573A (Misleading conduct), 573B (Unconscionable conduct) or 573C (False representations and other misleading conduct in relation to residential property)

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the court must prefer to make an order for compensation.

‘(5) If—

(a) the court orders a corporation to pay a money penalty under subsection (2) or compensation under subsection (3); and

(b) the corporation does not have the resources to pay either or both; the executive officers of the corporation are jointly and severally liable to pay any amount not paid by the corporation.

‘(6) It is a defence to a liability under subsection (5) for an executive officer to prove that—

(a) if the officer was in a position to influence the conduct of the corporation in relation to the conduct in question—the officer took all reasonable steps to ensure the corporation did not contravene section 573A, 573B or 573C; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the conduct in question.

‘(7) For subsection (6)(a), it is sufficient for the executive officer to prove that the act or omission that was the conduct in question was done or made without the officer’s knowledge despite the officer having taken all reasonable steps to ensure the corporation did not contravene section 573A, 573B or 573C.

‘572E Criteria for deciding amount to be ordered

‘To decide an amount a person may be ordered to pay under section 572D, the court must consider—

(a) the person’s conduct before and after the contravention; and

(b) whether the conduct was deliberate; and

(c) the period over which the conduct happened; and

(d) the amount of financial loss caused by the contravention; and

(e) any similar past conduct of the person, including conduct happening before the commencement of this section; and

(f) the person’s financial position; and

(g) whether the conduct could have been prevented; and

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- (h) if the person is a corporation—the extent to which the executive officers of the corporation knew or should have known of the contravention; and
- (i) any action the person took to remedy the contravention including, for example, compensating persons who suffered financial loss because of it; and
- (j) the extent to which the person cooperated with the chief executive to remedy the contravention and prevent future contraventions; and
- (k) any other relevant factor.’.

Clause 32 Amendment of ch 17, hdg

Chapter 17, heading, ‘OFFENCES’—

omit, insert—

‘CONTRAVENTIONS’.

Clause 33 Amendment of ch 17, pt 1, hdg

Chapter 17, part 1, heading, ‘OFFENCES’—

omit, insert—

‘CONTRAVENTIONS’.

Clause 34 Insertion of new ss 573A to 573E

After section 573—

insert—

‘573A Misleading conduct

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

Note—

For remedies for a contravention, see chapter 16 (Injunctions, undertakings, preservation of assets and civil penalties).

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‘573B Unconscionable conduct

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

Note—

For remedies for a contravention, see chapter 16 (Injunctions, undertakings, preservation of assets and civil penalties).

‘(2) Without limiting the matters to which regard may be had to decide whether a marketeer has contravened subsection (1), regard may be had to—

- (a) the relative strengths of the bargaining positions of the marketeer and the buyer of the property; and
- (b) whether, because of conduct engaged in by the marketeer, the buyer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the marketeer; and
- (c) whether the buyer was able to understand any documents relating to the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property; and
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the buyer or the person acting for the buyer by the marketeer in connection with the marketing of the property; and
- (e) the amount for which, and the circumstances under which, the buyer could have acquired an equivalent or similar property from another person; and
- (f) the extent to which the marketeer’s conduct towards the buyer was consistent with the marketeer’s conduct in similar transactions between the marketeer and other like buyers; and
- (g) the requirements of any applicable code of conduct; and
- (h) the extent to which the marketeer unreasonably failed to disclose to the buyer—
 - (i) any intended conduct of the marketeer that might affect the interests of the buyer; and

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- (ii) any risks to the buyer arising from the marketeer's intended conduct, if the risks are risks the marketeer should have foreseen would not be apparent to the buyer; and
- (i) the extent to which the marketeer failed to disclose to the buyer—
 - (i) any relationships of the marketeer to other marketeers in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property; or
 - (ii) anything required to be disclosed under this Act; and
- (j) the extent to which the marketeer was unwilling to negotiate the terms and conditions of any contract for the sale of the property with the buyer; and
- (k) whether or not it was reasonably practicable for the buyer to negotiate for the alteration of, or to reject, any of the provisions of the contract for the property; and
- (l) whether or not the buyer or a person who represented the buyer was reasonably able to protect the interests of the buyer because of the age or physical or mental condition of the buyer or the person who represented the buyer; and
- (m) whether or not, and if so when, the buyer obtained, or an opportunity was made available to the buyer to obtain, independent legal, valuation or other expert advice; and
- (n) the extent to which the provisions of the contract and the contract's legal and practical effect were accurately explained to the buyer and whether or not the buyer understood those provisions and their effect; and
- (o) whether the marketeer took measures to ensure that the buyer understood the nature and implications of the transaction and, if so, the adequacy of those measures; and
- (p) whether at the time the contract was entered into, the marketeer knew, or could have ascertained by reasonable inquiry of the buyer at the time, that the buyer could not pay in accordance with its terms or not without substantial hardship; and

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(q) the extent to which the marketeer and the buyer acted in good faith; and	1 2
(r) any other relevant factor.	3
‘573C False representations and other misleading conduct in relation to residential property	4 5
‘(1) A marketeer must not, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property in Queensland, represent in any way to someone else anything that is false or misleading.	6 7 8 9
<i>Note—</i>	10
For remedies for a contravention, see chapter 16 (Injunctions, undertakings, preservation of assets and civil penalties.	11 12
‘(2) Without limiting subsection (1), a marketeer must not, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property, or the possible sale of residential property in Queensland—	13 14 15 16
(a) represent that the person has a sponsorship, approval or affiliation the person does not have; or	17 18
(b) make a false or misleading representation about—	19
(i) the nature of the interest in the property; or	20
(ii) the price payable for the property; or	21
(iii) the location of the property; or	22
(iv) the characteristics of the property; or	23
(v) the use to which the property is capable of being put or may lawfully be put; or	24 25
(vi) the existence or availability of facilities associated with the property; or	26 27
(vii) the value of the property at the date of the sale; or	28
(viii) the potential income from the leasing of the property; or	29
(ix) if the property has been previously sold, the date of the sale and the consideration for the sale; or	30 31

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- (x) how the purchase of the property may affect the incidence of income taxation on the buyer; or
- (c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered; or
- (d) in Queensland, do anything to cause a representation mentioned in paragraph (a) or (b), or an offer mentioned in paragraph (c), to be made outside Queensland.
- Note—*
- For remedies for a contravention see chapter 16 (Injunctions, undertakings, preservation of assets and civil penalties).
- ‘(3) Without limiting subsection (1) or (2), a representation is taken, for the subsection, to be false or misleading if it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the representation indicates that state of affairs does exist.
- ‘(4) Also, if a person makes a representation in relation to a matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading.
- ‘(5) The onus of establishing that the person had reasonable grounds for making the representation is on the person.
- ‘(6) It is not a defence to a proceeding for a contravention of subsection (1) or (2) for the marketeer to prove that an agreement with the person was terminated or that the person did not enter into an agreement because of the representation.
- ‘(7) This section does not limit another Act or law about false or misleading representations.¹⁵
- ‘(8) In this section—
- “false or misleading”**, in relation to a representation, includes the wilful concealment of a material fact in the representation.

15 See, for example, *Fair Trading Act 1989*, section 40A (False representations and other misleading or offensive conduct in relation to land—TPA s 53A) and *Trade Practices Act 1974* (Cwlth), section 53A (False representations and other misleading or offensive conduct in relation to land).

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‘573D Application of ss 573A, 573B and 573C

‘Sections 573A, 573B and 573C are in addition to, and do not limit, any other law, written or unwritten, about conduct mentioned in them.

‘573E Offensive conduct in relation to residential property

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

Maximum penalty—540 penalty units.

‘(2) In this section—

“unduly harass” includes the following—

(a) the use of any physical force;

(b) coercion.’.

Clause 35 Insertion of new s 575A

After section 575—

insert—

‘575A Chief executive to ask for substantiation of representations made by marketeers

‘(1) This section applies if the chief executive believes, on reasonable grounds, that a marketeer has made a representation in contravention of section 573C(1) or (2).

‘(2) The chief executive may, by written notice, ask the person to give to the chief executive written proof that supports the representation.

‘(3) The notice must—

(a) state a day, at least 14 days after the day the notice is given to the person, by which the person must give the proof to the chief executive; and

(b) warn the person it is an offence to fail to respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to respond.

‘(4) The person must respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to respond.

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Maximum penalty—540 penalty units.	1
‘(5) It is a reasonable excuse to fail to comply with subsection (4) if complying with the subsection would tend to incriminate the person.’.	2 3
Clause 36 Amendment of s 590 (Responsibility for acts or omissions of representatives)	4 5
Section 590(4)—	6
<i>insert—</i>	7
‘ “offence” includes a contravention of this Act for which an amount may be ordered by the District Court or the tribunal to be paid as a money penalty.’.	8 9 10
Clause 37 Amendment of s 592 (Power of court)	11
Section 592—	12
<i>insert—</i>	13
‘(5) This section does not apply to an offence against section 572A(6), 573E(1) or 575A(4). ¹⁶ ’.	14 15
Clause 38 Insertion of new s 592A	16
After section 592—	17
<i>insert—</i>	18
‘592A Power of court for particular offences	19
‘(1) A court may, in addition to any other penalty it may impose on a person convicted of an offence against section 572A(6), 573E(1) or 575A(4), order that—	20 21 22
(a) if the person is a licensee or a registered employee—	23
(i) the licensee’s licence or registered employee’s registration certificate be suspended for a stated period or cancelled; or	24 25

16 Section 572A (Powers of court for preservation of assets), 573E (Offensive conduct in relation to residential property) or 575A (Chief executive to ask for substantiation of representations made by marketeers)

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(ii) the person be disqualified from holding a licence or registration certificate under this Act for a stated period or permanently; or

(b) whether or not the person is a licensee or a registered employee—the person be disqualified from holding a licence or registration certificate under this Act for a stated period or permanently.

‘(2) The court may also make any other order the tribunal may make in a marketeer proceeding.¹⁷

‘(3) However, if the court makes an order for compensation, the court may order the payment of an amount up to the limit of the court’s civil jurisdiction.

‘(4) The court may make an order under this section—

(a) on the chief executive’s application; or

(b) on its own initiative.

‘(5) If an order is made by a court under this section on the court’s own initiative, the court must cause a copy of the order to be given to the chief executive.’.

Clause 39 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions “**attendance notice**”, “**contract**” and “**property information session**”—

omit.

(2) Schedule 3—

insert—

‘ “**attendance notice**” means an attendance notice issued under this Act.

“**civil jurisdiction**”, in relation to an amount that is the limit of a court’s civil jurisdiction, means an amount equal to the maximum amount that may be claimed in a personal action in the civil jurisdiction of the court.

“**hearing date**” means a date fixed for a hearing under this Act.

¹⁷ For the orders a tribunal may make, see section 530A (Orders tribunal may make in a marketeer proceeding).

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“marketeer”—

- (a) means a person directly or indirectly involved in any way in the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property, alone, or with others under a formal or informal arrangement, and whether or not—
 - (i) the person derives a direct or indirect benefit from the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property; or
 - (ii) the way the property is marketed includes offering potential buyers of the property inducements intended to encourage them to purchase the property; or
 - (iii) any of the persons is licensed or is a registered employee; or
 - (iv) the sale, or promotion of the sale, or provision of a service in connection with the sale, of property is, or is part of, a business the person ordinarily conducts; and
- (b) includes a person who—
 - (i) causes or arranges for the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property; or
 - (ii) provides advisory, management, legal, accounting, administrative or other services in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property.

“marketeer proceeding” see section 500A.

“promote”, the sale of residential property, means take action to increase awareness of the property with a view to increasing the likelihood of sale.

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

