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2010

A Bill

for

An Act to comprehensively provide for the regulation of the activities, licensing and conduct of motor dealers and chattel auctioneers and their employees, to protect consumers against particular undesirable practices

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The Parliament of Queensland enacts—

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Motor Dealers and Chattel Auctioneers Act 2010*.

2 Commencement

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

3 Act binds all persons

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

4 Exemption—auctions

Part 4 does not apply to—

- (a) a sale ordered by the sheriff, or a bailiff of the Supreme Court, the District Court or a Magistrates Court, under any process issued out of a court; or
- (b) a sale made under a rule, order, or judgment of the Supreme Court or District Court; or
- (c) a sale made by a person obeying an order of, or a process issued by, a court, judge or justice, or the

registrar of the State Penalties Enforcement Registry for the recovery of a fine, penalty, or award; or

- (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; or
- (g) a sale conducted for a charity, a religious denomination, or an organisation formed for a community purpose, within the meaning of the *Collections Act 1966* (a **relevant entity**) if—
 - (i) the person conducting the sale does not receive from the relevant entity a reward for the person's services; and
 - (ii) amounts received from the sale are paid directly to an officer or employee of the relevant entity who is authorised by the relevant entity to receive and deal with the amounts; or
- (h) a sale conducted by or for Magic Millions Sales Pty Ltd ACN 078 396 317 as part of the event known as the Gold Coast Horses in Training Sale if the sale is conducted by a person approved by the chief executive before the sale as a suitable person to conduct the sale.

5 Exemption—liquidators, controllers and receivers

- (1) This section applies to—
 - (a) a person, appointed under the Corporations Act, as a liquidator, or controller of property, of a corporation that is authorised under a licence to perform an activity; or
 - (b) a person, appointed under the Administration Act, as a receiver of an entity that is authorised under a licence to perform an activity.
- (2) The person is exempt from the following provisions while performing the activity in relation to any business carried on

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under a licence in accordance with any conditions applying to the licence—

- section 63, part 3, division 2, subdivision 1 and section 68
- section 114
- section 115
- section 116
- section 117
- section 127, part 4, division 2, subdivision 1, section 131 and part 4, division 5.

6 Exemption—financial institutions and trustee companies

- (1) Part 3 does not apply to a financial institution or trustee company.
- (2) In this section—
trustee company means—
 - (a) a trustee company under the *Trustee Companies Act 1968*; or
 - (b) the public trustee when the public trustee is—
 - (i) performing the activities that may be performed by a trustee company; or
 - (ii) exercising the powers that may be exercised by a trustee company; or
 - (iii) holding an office that may be held by a trustee company.

Division 2 Object

7 Main object

- (1) The main object of this Act is to provide a system for licensing and regulating persons as motor dealers and chattel auctioneers, and for registering and regulating persons as registered employees, that achieves an appropriate balance between—
 - (a) the need to regulate for the protection of consumers; and
 - (b) the need to promote freedom of enterprise in the market place.
- (2) The object is to be achieved mainly by—
 - (a) ensuring—
 - (i) only suitable persons with appropriate qualifications are licensed or registered; and
 - (ii) persons who carry on business or are in charge of a licensee’s business at a place under the authority of a motor dealer licence or chattel auctioneer licence maintain close personal supervision of the way the business is carried on; and
 - (b) providing—
 - (i) protection for consumers in their dealings with licensees and their employees; and
 - (ii) a legislative framework within which persons performing activities for licensees may lawfully operate; and
 - (c) regulating fees and commissions that can be charged for particular transactions; and
 - (d) promoting administrative efficiency by providing that—
 - (i) responsibility for licensing rests with the chief executive; and

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- (ii) responsibility for reviewing particular decisions of the chief executive rests with QCAT; and
- (iii) responsibility for disciplinary matters rests with QCAT; and
- (e) enabling claims for compensation against the fund under the Administration Act to be made by 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.

Division 3 Interpretation

8 Definitions

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

9 Meaning of *beneficial interest*

- (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 of the property is made for the licensee or an associate of the licensee.

Note—

‘Associate’ is a term defined in the dictionary.

Case 2

An option to purchase the property is held by the licensee or an associate of the licensee.

Case 3

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

Case 4

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

Case 5

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

Case 6

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

Case 7

If the licensee is a corporation, the purchase of the property is made for an executive officer of the licensee or an associate of the executive officer.

Case 8

If the licensee is a corporation, an option to purchase the property is held by an executive officer of the licensee or an associate of the executive officer.

Case 9

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

Case 10

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

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

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Case 1

The purchase of the property is made for the registered employee or an associate of the employee.

Note—

‘Associate’ is a term defined in the dictionary.

Case 2

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

Case 3

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

Case 5

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

Case 6

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

Case 7

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

Case 8

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

Case 9

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

Case 10

The purchase of the property is made for a person carrying on a business for profit or gain and the registered 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 of the property.

10 Meaning of *in charge*

- (1) A person is *in charge* of a licensee's business at a place where the licensee carries on business only if the person personally supervises, manages or controls the conduct of the licensee's business at the place.
- (2) In this section—
licensee's business means the licensee's business carried on under the authority of the licensee's licence.

11 Meaning of *motor vehicle*

- (1) A *motor vehicle* means—
 - (a) a vehicle that moves on wheels and is propelled by a motor that forms part of the vehicle, whether or not the vehicle is capable of being operated or used in a normal way; or
 - (b) a caravan.
- (2) However, a *motor vehicle* does not include any of the following—
 - (a) a hovercraft;
 - (b) a motorised golf buggy;
 - (c) a motorised scooter;

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- (d) a motorised wheelchair;
- (e) a trailer, other than a caravan;
- (f) a tractor or farm machinery;
- (g) a vehicle designed for use exclusively in the mining industry;
- (h) a vehicle designed for use exclusively on a railway or tramway.

(3) In this section—

motorised golf buggy means a motorised golf buggy under the *Transport Operations (Road Use Management) Act 1995*.

motorised scooter see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

motorised wheelchair means a motorised wheelchair under the *Transport Operations (Road Use Management) Act 1995*.

Part 2 Licensing

Division 1 Categories of licence

12 Categories of licence

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

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

13 Limited motor dealer licence

- (1) The chief executive may issue a motor dealer licence (a *limited motor dealer licence*) of a type prescribed under a regulation, that authorises the performance of activities that

are more limited than the activities that may be performed under an unconditional motor dealer licence.

- (2) A regulation may prescribe—
 - (a) the activities that may be performed under a limited motor dealer licence; and
 - (b) the educational requirements for obtaining a limited motor dealer licence.

Division 2 How to obtain a licence

14 Steps involved in obtaining a licence

- (1) A person who wishes to obtain a licence must be a suitable person to hold a licence under division 4.
- (2) The person must apply for the licence by—
 - (a) submitting an application showing, among other things, the person is eligible to obtain the licence; and
 - (b) paying—
 - (i) the fees prescribed under a regulation; and
 - (ii) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid; and
 - (c) giving the chief executive the other information required under section 16 and, if the person intends carrying on business under the licence, section 18.
- (3) In deciding the application, the chief executive must have regard to, among other things—
 - (a) the person's suitability to hold a licence under this Act; and
 - (b) the person's eligibility to hold the licence.

Division 3 Applications for licence

15 Application for licence

- (1) An applicant for a licence must—
 - (a) apply to the chief executive in the approved form; and
 - (b) state the category of licence being applied for; and
 - (c) state the term of the licence being applied for; and
 - (d) establish the applicant's eligibility for the category of licence being applied for; and
 - (e) state the names and addresses of the applicant's business associates; and
 - (f) provide any information the chief executive reasonably requires to decide whether the applicant is a suitable person to hold a licence.
- (2) The application must be accompanied by—
 - (a) an application fee prescribed under a regulation; and
 - (b) a licence issue fee prescribed under a regulation; and
 - (c) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid.

16 Applicant must specify business address

- (1) The applicant must also specify in the applicant's application—
 - (a) if the applicant intends carrying on business under the licence immediately after the issue of the licence—the place or places in Queensland where the applicant proposes to carry on business under the licence; or
 - (b) if the applicant does not intend carrying on business under the licence immediately after the issue of the licence—

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- (i) the capacity in which the person intends performing activities under the licence and the address where the activities 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 activities may be performed—

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

Example of business address of an employed licensee—

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

- (2) If the applicant intends to carry on business under the licence at more than 1 place, the applicant must 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.

Note—

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

17 Requirement to give information or material about application

- (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 period.

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

18 Applicant intending to carry on business to advise name of auditor

If the applicant intends carrying on business under a licence and is required under section 211 to keep a trust account or special 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; and

Note—

See section 26 (Principal licensee must appoint auditor) of the Administration Act.

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

Division 4 Suitability of applicants and licensees

19 Suitability of applicants and licensees—individuals

- (1) An individual is not a suitable person to hold a licence if the person is—
 - (a) affected by bankruptcy action; or
 - (b) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
 - (c) currently disqualified from holding a licence or registration certificate; or
 - (d) a person the chief executive decides under section 21 is not a suitable person to hold a licence.

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

20 Suitability of applicants and licensees—corporations

- (1) A corporation is not a suitable person to hold a licence if an executive officer of the corporation is—
 - (a) affected by bankruptcy action; 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 21 is not a suitable person to hold a licence.
- (2) A corporation that is not a suitable person can not hold a licence.

21 Chief executive must consider suitability of applicants and licensees

- (1) The chief executive must, when deciding whether a person is a suitable person to hold a licence, consider the following things—
 - (a) the character of the person;
 - (b) the character of the person’s business associates;
 - (c) whether the person held a licence under a relevant Act that was suspended or cancelled within the meaning of the relevant Act;
 - (d) whether an amount has been paid from the fund because the person did, or omitted to do, something that gave rise to the claim against the fund;
 - (e) whether the person has been disqualified under a relevant Act from being the holder of a licence within the meaning of the relevant Act, or an executive officer of a corporation;
 - (f) for an individual—

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- (i) the person's criminal history; and
- (ii) whether the person has been affected by bankruptcy action; and
- (iii) whether the person has been convicted of an offence against a relevant Act or the Administration Act; and
- (iv) whether the person is capable of satisfactorily performing the activities of a licensee; and
- (v) whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act;

Editor's note—

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

- (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 been affected by bankruptcy action; and
 - (iii) whether an executive officer of the corporation has been convicted of an offence against an Agents Act, the Administration Act or the repealed Act; and
 - (iv) whether each executive officer of the corporation is a suitable person to hold a licence; and
 - (v) another thing the chief executive may consider under this Act.
- (2) If the chief executive decides a person is not a suitable person to hold a licence, the chief executive must give the person an information notice within 14 days after the decision is made.
- (3) In this section—

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

relevant Act means this Act, an Agents Act, the repealed Act and a corresponding law.

22 Public trustee is a suitable person

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

23 Chief executive of department is a suitable person

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

24 Investigations about suitability of applicants and licensees

- (1) The chief executive may make investigations about the following persons to help the chief executive decide whether an applicant or licensee is a suitable person to hold a licence—
 - (a) the applicant or licensee;
 - (b) if the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction;
 - (c) if the applicant or licensee is a corporation—the corporation’s executive officers;
 - (d) a business associate of the applicant or licensee.
- (2) Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a report about the criminal history of any of the persons.
- (3) The commissioner must give the report to the chief executive.
- (4) However, the report is required to contain only criminal history in the commissioner’s possession or to which the commissioner has access.

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- (5) If the criminal history of the person includes a conviction recorded against the person, the commissioner's report must be written.
- (6) In this section—
applicant includes a nominated person mentioned in section 46(3) or 47(4).

25 Costs of criminal history report

- (1) The chief executive may require an applicant or licensee to pay the reasonable, but no more than actual, costs of obtaining a report under section 24 about—
 - (a) the applicant or licensee; or
 - (b) if the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction; or
 - (c) if the applicant or licensee is a corporation—the corporation's executive officers; or
 - (d) a business associate of the applicant or licensee; or
 - (e) if the applicant has made an application under section 46(3) or 47(4)—the person nominated by the applicant under section 46(3) or 47(4).
- (2) The requirement is a *criminal history costs requirement*.
- (3) The requirement is sufficiently made of the applicant or licensee if it is made generally of applicants of that type in the relevant approved form or notified on the department's website for applicants or licensees of that type.
- (4) The chief executive must refund to an applicant an amount paid under the requirement if—
 - (a) the chief executive refuses the application without asking for the report; or

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- (b) the applicant withdraws the application before the chief executive asks for the report.
 - (5) In this section—
applicant includes proposed applicant.

26 Confidentiality of criminal history

- (1) A public service employee performing functions under this Act 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 24.
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.
- (3) The chief executive must destroy a written report about a person's criminal history as soon as practicable after considering the person's suitability to hold a licence.

27 Requirement to give chief executive information or material about suitability

- (1) This section applies to an applicant for the issue of 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 period.
- (3) The applicant is taken to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive's requirement.

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Division 5 Eligibility for licence

Subdivision 1 Motor dealer licence

28 Eligibility for motor dealer licence

- (1) An individual is eligible to obtain a motor dealer licence only if the individual—
 - (a) is at least 18 years; and
 - (b) has the educational or other qualifications for a motor dealer licence that may be prescribed under a regulation.
- (2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—
 - (a) has a comparable qualification; or
 - (b) within 2 years before the day the individual's application for a motor dealer licence is received by the chief executive—
 - (i) has been licensed as a motor dealer; or
 - (ii) has been the holder of a comparable licence under the repealed Act.
- (3) A corporation is eligible to obtain a motor dealer licence only if—
 - (a) a person in charge of the corporation's business is a motor dealer; and
 - (b) each director of the corporation is a suitable person under part 4 as if the director were an applicant for a licence.

Subdivision 2 Chattel auctioneer licence

29 Eligibility for chattel auctioneer licence

- (1) An individual is eligible to obtain a chattel auctioneer licence only if the individual—
 - (a) is at least 18 years; and
 - (b) has the educational or other qualifications for a chattel auctioneer licence that may be prescribed under a regulation.
- (2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—
 - (a) has a comparable qualification; or
 - (b) within 2 years before the day the individual's application for a chattel auctioneer licence is received by the chief executive—
 - (i) has been licensed as a chattel auctioneer; or
 - (ii) has been the holder of a comparable licence under the repealed Act.
- (3) A corporation is eligible to obtain a chattel auctioneer licence only if—
 - (a) a person in charge of the corporation's business is a chattel auctioneer; and
 - (b) each director of the corporation is a suitable person under part 4 as if the director were an applicant for a licence.

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Subdivision 3 Chief executives and corporations sole

30 Public trustee is eligible to obtain licences

The public trustee as a corporation sole is taken to be eligible to obtain a motor dealer licence or chattel auctioneer licence.

31 Chief executive of department is eligible to obtain licences

The chief executive of a department is taken to be eligible to obtain a motor dealer licence or chattel auctioneer licence.

Division 6 Issue of licences

32 Chief executive may issue or refuse to issue licence

- (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—
 - (a) the applicant 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) the applicant is eligible to obtain a licence of the category of licence being applied for; and
 - (c) the application is properly made.

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- (3) For subsection (2)(c), an application is properly made only if it complies with section 15 and is accompanied by the things mentioned in that section.
 - (4) If the chief executive decides to refuse to issue the licence, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.
 - (5) If the applicant's application for a licence is refused, the applicant may not make another application for a licence—
 - (a) for 3 months after the day the chief executive gives the applicant the information notice under subsection (4); or
 - (b) if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed.
 - (6) Subsection (5) does not apply if—
 - (a) the applicant is a corporation; and
 - (b) the applicant satisfies the chief executive that, because of a genuine sale—
 - (i) no person who was a shareholder of, or held a beneficial interest in, the corporation when the refused application was made is a shareholder of, or holds a beneficial interest in, the applicant corporation; and
 - (ii) no person who was in a position to control or influence the affairs of the corporation when the refused application was made is in a position to control or influence the affairs of the applicant corporation.

33 Licence—public trustee

- (1) The chief executive may issue a licence to the public trustee in the public trustee's capacity as a corporation sole in the name 'The Public Trustee of Queensland'.
- (2) A licence issued to the public trustee authorises an officer or employee of the public trustee to perform any activity

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authorised by the public trustee that the public trustee may perform under the licence.

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

34 Licence—chief executive of department

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

35 Licence—conditions

- (1) The chief executive may issue a licence on the conditions the chief executive considers necessary or desirable for the proper performance of the activities authorised by the licence.
- (2) Without limiting subsection (1), a condition may—
 - (a) limit or prohibit the performance of an activity authorised under this Act or the Administration Act; or
 - (b) require a licensee to hold insurance of a kind and in an amount prescribed under a regulation.

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- (3) If the chief executive decides to issue a licence on condition, the chief executive must give the applicant an information notice within 14 days after the decision is made.

Division 7 Restrictions on performing activities under licences

36 Restriction—corporations

- (1) A corporation that holds a licence may perform an activity under its licence at a place only if the activity may be performed by—
 - (a) a licensed person in charge of the corporation’s business at the place; or
 - (b) a liquidator or controller appointed under the Corporations Act of property of the corporation; or
 - (c) a receiver appointed under this Act of property of the corporation.
- (2) However, subsection (1) does not prevent a corporation that holds a motor dealer licence selling or attempting to sell or offering for sale or resale a used motor vehicle by way of auction if the auction is conducted by a chattel auctioneer who is an employed licensee of the corporation.
- (3) If the corporation performs an activity it is not authorised to perform, it is taken to be a person who acts as a licensee without a licence for the performance of the activity.

37 Restriction—individuals

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

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Example—

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

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

38 Restriction—conditions

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

Note—

For the consequences of a licensee performing an activity that the licensee is not authorised to perform because of a condition on the licensee's licence see sections 73 and 122, 136, 137 and 174.

Division 8 Renewal and restoration of licences

Subdivision 1 Renewal

39 Application for renewal

- (1) A licensee may only apply for renewal of the licensee's licence before the licence expires.

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- (2) The application must—
- (a) be made to the chief executive in the approved form; and
 - (b) state the term of the licence being applied for; and
 - (c) state the names and addresses of the licensee’s business associates; and
 - (d) be accompanied by—
 - (i) an application fee prescribed under a regulation; and
 - (ii) a licence renewal fee prescribed under a regulation; and
 - (iii) if the licensee is required as a condition of the licensee’s licence to hold insurance, proof of the currency of the insurance; and
 - (iv) if, before or when the application is made, a criminal history costs requirement is made of the licensee—the amount of the costs required to be paid.
- (3) The application must also be accompanied by—
- (a) an audit report for all trust accounts kept by the licensee during the relevant audit period; or
 - (b) a statutory declaration 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 activities authorised under the licence for a period, and within the period, prescribed under a regulation.
- (5) In this section—
- relevant audit period***, for a licensee’s licence, means the audit period ending immediately before the licence’s expiry date.

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40 Chief executive may renew or refuse to renew licence

- (1) The chief executive must consider the renewal application and may renew or refuse to renew the licence.
- (2) The chief executive may renew the licence only if the chief executive is satisfied—
 - (a) the licensee is a suitable person 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
 - (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 principal licensee, a licensee in charge of a corporation's business or an employed licensee, actively carried out the activities 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 39 and is accompanied by the things mentioned in that section.
- (4) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice within 14 days after the decision is made.

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

If an application is made under section 39, the licensee's licence is taken to continue in force from the day that it

would, apart from this section, have expired until the licensee's application for renewal is—

- (a) decided under section 40; or
- (b) withdrawn by the licensee; or
- (c) taken to have been withdrawn under section 27(3).

Subdivision 2 Restoration

42 Application for restoration

- (1) If a licensee's licence expires, the person (*former licensee*) may apply for restoration of the licence.
- (2) The application must—
 - (a) be made within 3 months after the expiry; and
 - (b) be made to the chief executive in the approved form; and
 - (c) state the term of the licence being applied for; and
 - (d) state the names and addresses of the former licensee's business associates; and
 - (e) be accompanied by—
 - (i) an application fee prescribed under a regulation; and
 - (ii) a licence renewal fee prescribed under a regulation; and
 - (iii) a licence restoration fee prescribed under a regulation; and
 - (iv) if the former licensee was required as a condition of the former licensee's licence to hold insurance, proof of the currency of the insurance; and
 - (v) if, before or when the application is made, a criminal history costs requirement is made of the former licensee—the amount of the costs required to be paid.

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- (3) The application must also be accompanied by—
 - (a) an audit report about all trust accounts maintained by the former licensee during the relevant audit period; or
 - (b) a statutory declaration that the former licensee did not operate a trust account during the relevant audit period.
- (4) The former licensee must also satisfy the chief executive that the former licensee has, as a licensee or salesperson, actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation.
- (5) In this section—

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

43 Chief executive may restore or refuse to restore licence

- (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 principal licensee or employed licensee, actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation; and

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- (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 42 and is accompanied by the things mentioned in that section.
 - (4) If the chief executive decides to refuse the application, the chief executive must give the licensee an information notice within 14 days after the decision is made.
 - (5) If the chief executive restores the licence—
 - (a) the licence is taken to have been renewed on the day it would, apart from section 44, have expired (the *initial expiry date*); and
 - (b) to remove any doubt, a thing done during the period starting on the initial expiry date and ending on the day the licence is restored under this section is taken to have been as validly done as it would have been if the licence had been renewed immediately before the initial expiry date.

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

If an application is made under section 42, 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—

- (a) decided under section 43; or
- (b) withdrawn by the licensee; or
- (c) taken to have been withdrawn under section 27(3).

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Division 9 Dealings with licences

Subdivision 1 Transfer of licence

45 Transfer of licence prohibited

A licence may not be transferred.

Subdivision 2 Substitute licences

46 Appointment of substitute licensee—principal licensee—individual

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

Maximum penalty—100 penalty units.

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

Maximum penalty—200 penalty units.

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

- (6) In this section—

principal licensee means a principal licensee who is an individual.

representative, of a principal licensee, means—

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

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

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

Maximum penalty—100 penalty units.

- (4) If the employed licensee will be absent from the place for a period of more than 30 days, the principal licensee who employs the employed licensee must apply to the chief executive in the approved form for the appointment or the extension of the appointment of a person (*nominated person*) as the licensee’s substitute licensee.

Maximum penalty—200 penalty units.

- (5) The application must be accompanied by—

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- (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 activities during the period; and
 - (c) the application fee prescribed under a regulation; and
 - (d) if, before or when the application is made, a criminal history costs requirement is made of the principal licensee—the amount of the costs required to be paid.
- (6) In this section—
- principal licensee* includes—
- (a) for a licensee for whom an administrator has been appointed under the *Guardianship and Administration Act 2000*—the licensee's administrator; and
 - (b) for a deceased licensee—the licensee's personal representative.

48 Chief executive may appoint or refuse to appoint substitute licensee

- (1) The chief executive may appoint or refuse to appoint a nominated person mentioned in section 46(3) or 47(4) as a licensee's substitute licensee.
- (2) The chief executive may appoint the nominated person only if the chief executive is satisfied that the person—
 - (a) is, under division 4, a suitable person to hold a licence; and
 - (b) is sufficiently qualified to perform the licensee's activities during the period of the licensee's absence; and

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- (c) if the licensee is required as a condition of the licensee's licence to hold insurance, is covered by the insurance or holds insurance that complies with the requirements of the condition.
- (3) An appointment under this section may be made subject to the conditions the chief executive considers appropriate.
- (4) The chief executive must give written notice of the appointment to the licensee and the substitute licensee.
- (5) If the chief executive decides to refuse the application or to impose conditions on the appointment, the chief executive must give the licensee an information notice within 14 days after the decision is made.

49 Substitute licensee

- (1) On appointment, a substitute licensee—
 - (a) must act as substitute for the licensee for whom the substitute is appointed; and
 - (b) is taken to be the licensee during the period of appointment.
- (2) A licensee for whom a substitute has been appointed must not act under the authority of the licensee's licence while the appointment of the substitute licensee continues.
Maximum penalty—200 penalty units.
- (3) The appointment of the substitute licensee ends if—
 - (a) the period of 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 46(1) or 47(2)—to the substitute licensee; or
 - (ii) for a substitute licensee appointed under section 48—to the chief executive and the substitute licensee; or

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- (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 46(1) or 47(2)—to the principal licensee making the appointment; or
 - (ii) for a substitute licensee appointed under section 48—to the chief executive and the principal licensee who applied for the appointment; or
 - (d) the chief executive revokes the substitute licensee’s appointment; or
 - (e) the licensee’s licence is suspended or cancelled; or
 - (f) if the licensee is a principal licensee, the licensee stops carrying on business as a licensee.

50 Limitation on period of substitution

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

Subdivision 3 General

51 Amendment of licence conditions

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

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Note—

QCAT may deal with the conditions of a person's licence under section 222.

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

52 Return of licence for amendment of conditions or when suspended or cancelled

- (1) If the chief executive amends the conditions of a licence under section 51, the chief executive may require the licensee to produce the licence for amendment within a stated period of not less than 14 days.

- (2) The licensee must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

53 Surrender of licence

- (1) A licensee may surrender the licensee's licence by giving written notice to the chief executive and returning the licence.

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

54 Licence may be deactivated

- (1) A licensee may ask the chief executive to deactivate the licensee's licence.

- (2) A request under subsection (1) must be made in the approved form and be accompanied by the licensee's licence and the fee prescribed under a regulation.

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- (b) the chief executive reasonably considers that an irregularity or deficiency exists in a licensee's trust account; or
 - (c) the chief executive is satisfied a licensee who has been convicted of failing to file an audit report as required under the Administration Act, section 36, continues, after the end of any appeal against the conviction, to fail to file the audit report; or
 - (d) a receiver is appointed under the Administration Act, section 51, over property—
 - (i) held by a licensee; or
 - (ii) held by another person for a licensee; or
 - (iii) recoverable by a licensee; or
 - (e) the chief executive reasonably considers that a licensee—
 - (i) has contravened or is contravening this Act, the Administration Act or an Agents Act; or
 - (ii) has contravened the repealed Act; or
 - (iii) is likely or proposing to engage in conduct that would contravene this Act or the Administration Act.
- (2) The chief executive may, whether or not disciplinary proceedings have been started under this Act—
 - (a) suspend the licensee's licence; or
 - (b) without limiting paragraph (a), for subsection (1)(a), suspend a licence held by an employee of the licensee if the chief executive considers, on reasonable grounds, the employee is responsible in any way for the irregularity or deficiency in the licensee's trust account.
 - (3) If the chief executive suspends a licence for a reason mentioned in subsection (1)(a), (c) or (d), the licence may be suspended for the period, of not more than 28 days, and on the conditions, the chief executive decides.

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- (4) If the chief executive suspends the licence for the reason mentioned in subsection (1)(b), the licence is suspended until whichever of the following happens first—
 - (a) the licensee files the required audit report;
 - (b) an application to QCAT for the cancellation of the licence is heard and decided.
- (5) The chief executive must give the licensee an information notice in relation to the suspension within 14 days after suspending the licensee's licence.
- (6) The licensee must return the licence to the chief executive within 14 days after the licensee receives the notice, unless the person has a reasonable excuse.

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

56 Immediate cancellation

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

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

Division 11 General provisions about licences

57 Form of licence

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

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- (2) However, the chief executive may approve—
 - (a) a form of licence for office display purposes; and
Example—
 - a licence in the form of a certificate that may be framed and displayed in an office
 - (b) a form of licence for personal identification purposes.
 - (3) The chief executive may also issue a form of licence for a corporation endorsed with the categories of licence issued in the corporation's name.
 - (4) The licence must contain the following particulars—
 - (a) the name of the licensee;
 - (b) the date of issue of the licence;
 - (c) the expiry date of the licence;
 - (d) other particulars that may be prescribed under a regulation.

58 Display of licence

A principal licensee must display the licensee's licence at the licensee's principal place of business in the way prescribed under a regulation.

Maximum penalty—100 penalty units.

59 Term of licence

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

60 Replacement licences

- (1) A licensee may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged licence.
- (2) The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.

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- (3) The chief executive must grant the application if the chief executive is satisfied the licence has been lost, stolen or destroyed, or damaged in a way to require its replacement.
- (4) If the chief executive grants the application, the chief executive must issue another licence to the applicant to replace the lost, stolen, destroyed or damaged licence.

61 Register of licences

- (1) The chief executive must keep a register of licences and applications for licences (*licence register*).
- (2) The licence register must contain the following particulars—
 - (a) for each applicant for a licence—
 - (i) the applicant's name; and
 - (ii) if the applicant intends to carry on business under the licence, the place where the applicant intends to carry on business; and
 - (iii) the category of licence applied for; and
 - (iv) the date of the application; and
 - (v) the application number;
 - (b) for each licensee—
 - (i) the licensee's name; and
 - (ii) the licensee's registered office; and
 - (iii) the category of the licensee's licence; and
 - (iv) the dates of issue and expiry of the licensee's current licence; and
 - (v) any conditions imposed on the licence; and
 - (vi) if the licensee is a corporation, the name of the individual in charge of the licensee's business at the licensee's registered office; and

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- (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, inspect, or get a copy of details in, the part of the register containing the particulars mentioned in subsection (2)—
 - (a) at a place or places decided by the chief executive; or
 - (b) by using a computer.
 - (4) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.
 - (5) The register may be kept in any way the chief executive considers appropriate.
 - (6) In this section—

contain includes record and store.

62 Licensees to notify chief executive of changes in circumstances

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

Maximum penalty—100 penalty units.
- (2) In this section—

prescribed change means a change prescribed under a regulation.

Part 3 Motor dealers

Division 1 Motor dealers' authorisation and responsibilities

63 What a motor dealer licence authorises

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

consultancy arrangement, for the purchase or sale of a used motor vehicle, means an arrangement under which a person advises someone else—

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- (a) where or from whom the other person can buy a used motor vehicle; or
 - (b) where or to whom the other person can sell a used motor vehicle.

64 Responsibility for acts and omissions of motor salespersons

- (1) A motor dealer who is a principal licensee must take reasonable steps to ensure each motor salesperson employed by the dealer is properly supervised and complies with this Act.
- (2) A motor dealer who is an employed licensee in charge of a licensee's business at a place of business must take reasonable steps to ensure each motor salesperson employed at the place is properly supervised and complies with this Act.
- (3) A motor dealer who fails to comply with subsection (1) or (2) is liable to disciplinary action under part 8, division 2.

Division 2 Conduct provisions

Subdivision 1 Carrying on business

65 Carrying on of business under motor dealer licence

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

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

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

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

Maximum penalty—200 penalty units.

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

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 252—200 penalty units; or
 - (b) for a corporation—1000 penalty units.
- (3) An individual must not be in charge of a motor dealer's business at more than 1 place.

Maximum penalty—200 penalty units.

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

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- (5) For subsection (4), land is *contiguous* with other land only if the parcels of land have a common boundary that is not separated by a public road.

67 Motor dealer dealing in motor vehicles

- (1) A motor dealer who is performing an activity the motor dealer is authorised under section 63(1) to perform in relation to a used motor vehicle is taken to be performing the activities of a motor dealer whether or not—
 - (a) the motor dealer is the registered operator, as defined under the *Transport Operations (Road Use Management) Act 1995*, of the motor vehicle; or
 - (b) the motor dealer or the motor dealer’s associate used the motor vehicle for private purposes.
- (2) The motor dealer must disclose to a potential buyer or seller of a vehicle that the licensee is a licensed motor dealer.
Maximum penalty—400 penalty units.
- (3) Also, if a person agrees to purchase a motor vehicle from, or sell a motor vehicle to, the motor dealer, the person must sign a written acknowledgement stating the motor dealer disclosed to the person that the licensee is a licensed motor dealer.

Subdivision 2 Consignment selling

68 Appointment—sale on consignment

- (1) A motor dealer must not act as a motor dealer for a person (*client*) to sell the client’s motor vehicle on consignment unless—
 - (a) the client first appoints the motor dealer in writing under this section; or
 - (b) a previous appointment is assigned to the motor dealer under the terms of the appointment or under section 70 and the appointment is in force.

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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 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) the fees, charges and any 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) the source and the estimated amount or value of any rebate, discount, commission or benefit that the motor dealer may receive in relation to any expenses the motor dealer is authorised to incur in connection with the performance of the service; and
 - (iv) any condition, limitation or restriction on the performance of the service; and
 - (d) state when the fees, charges and any commission for the service become payable.
- (4) A continuing appointment must state—

- (a) the date the appointment ends; and
 - (b) the appointment may be revoked on the giving of 90 days notice, or some lesser period (not less than 30 days) agreed by the parties.
- (5) The notice revoking a continuing appointment must be by signed writing given to the other party.
- (6) The appointment must be signed and dated 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 131 is not required.

69 Form of appointment

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

70 Proposal for assignment of appointments

- (1) This section applies if a motor dealer who holds appointments from clients to sell motor vehicles on consignment under section 68 proposes to assign the appointments to another motor dealer (*proposed assignee*) without changing the terms of the appointment.
- (2) However, this section does not apply to the assignment of an appointment if—
 - (a) the terms of the appointment authorise the assignment of the appointment; and

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- (b) the assignment is made in accordance with the terms of the appointment.
- (3) At least 14 days before the motor dealer assigns the appointments, the motor dealer must give each client written notice of the proposed assignment.
- (4) The notice must state the following—
 - (a) the proposed assignee's name;
 - (b) that the appointments are to be assigned without changing the terms of the appointment;
 - (c) the client may agree or refuse to agree to the proposed assignment;
 - (d) when the proposed assignment is to take effect.
- (5) If the client agrees to the assignment and the motor dealer assigns the appointment under this section, the appointment is taken, for section 69, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

71 Trade-ins

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

Subdivision 3 Recovery of reward or expense

72 Commission may be claimed only in relation to actual amounts

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

Maximum penalty—200 penalty units.

73 Restriction on remedy for reward or expense

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

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

74 Excess commission etc. to be repaid

- (1) This section applies if—
 - (a) a person is convicted of an offence against section 72(2) or 73(2); and

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

Subdivision 4 Interests in motor vehicles

75 Definition for sdiv 4

In this subdivision—

obtain includes being in any way concerned in obtaining.

76 Beneficial interest—options

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

Maximum penalty—200 penalty units or 3 years imprisonment.

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

Maximum penalty—200 penalty units or 3 years imprisonment.

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

Maximum penalty—200 penalty units or 3 years imprisonment.

77 Beneficial interest—other than options

- (1) This section applies to a motor vehicle placed by a person (*client*) with a motor dealer for sale on consignment, but does not apply if section 76 applies.

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

Maximum penalty—200 penalty units or 3 years imprisonment.

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

Maximum penalty—200 penalty units or 3 years imprisonment.

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

- (a) the person—

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

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

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

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

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- (b) no commission or other reward is payable in relation to the sale; and
- (c) the client is in substantially as good a position as the client would be if the motor vehicle were sold at fair market value.

78 Return of beneficial interest if in form of commission

- (1) This section applies if—
 - (a) a person is convicted of an offence against section 77(2) or (3); and
 - (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an activity an amount of commission to which the person was not entitled.
- (2) The court must order the person to pay the amount to the client.
- (3) The order must be made whether or not any penalty is imposed on the conviction.
- (4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

Subdivision 5 Code of conduct

79 Code of conduct

A regulation may prescribe a code of conduct about motor dealing practice that may include the following—

- (a) setting conduct standards for motor dealers, employed licensees and motor salespersons;
- (b) establishing principles for fair trading;

- (c) providing for a system of complaint resolution;
- (d) providing that contraventions of some provisions of the code are an offence.

80 Code of conduct complaints and action chief executive may take

- (1) A person aggrieved by the conduct of a motor dealer or motor salesperson may complain in writing to the chief executive about 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.

Note—

Breach of a code of conduct may be an offence and is a ground for starting disciplinary proceedings under section 217.

- (3) The investigation may take place and action may be taken against a person who was a motor dealer or motor salesperson even though the person complained about is no longer a motor dealer or motor salesperson.

Subdivision 6 Sales of used motor vehicles that are written-off vehicles

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

- (1) This section applies if a used motor vehicle that is an unregistered written-off vehicle is to be sold by a motor dealer, other than by auction, to a prospective buyer (*buyer*).
- (2) Before the motor dealer sells the vehicle to the buyer, the motor dealer must tell the buyer that the vehicle is a written-off vehicle and state—
 - (a) if the vehicle is a repairable write-off—that the vehicle is a repairable write-off and must pass a written-off vehicle inspection under a regulation under the

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Transport Operations (Road Use Management) Act 1995 before it can be registered; or

- (b) if the vehicle is a statutory write-off—that the vehicle can not be registered.

Maximum penalty—200 penalty units.

- (3) The motor dealer must also ask the buyer to sign an acknowledgement, printed in type no smaller than 12 point, that—

- (a) identifies the used motor vehicle as a written-off vehicle; and
- (b) states whether the vehicle is a repairable write-off or a statutory write-off.

Maximum penalty—200 penalty units.

- (4) The motor dealer must—

- (a) give the original of the acknowledgement to the buyer; and
- (b) keep a copy of the acknowledgement; and
- (c) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

Division 3 Sale of motor vehicles by motor dealer

82 Obligations of motor dealer

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

Note—

For a sale by auction, see section 149.

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

Maximum penalty—200 penalty units.

- (3) In a proceeding for an offence against subsection (2), it is a defence for the defendant to prove that the defendant took all reasonable steps to ensure subsection (2) was complied with.
- (4) The selling agent must, immediately after property in the vehicle passes to the buyer—
- (a) give the buyer an approved form stating—
 - (i) particulars about the vehicle, including its odometer reading at the time property passes; and
 - (ii) the responsible motor dealer guarantees the buyer gains clear title to the vehicle at the time property passes; and
 - (iii) any other particulars prescribed under a regulation; and
 - (b) ask the buyer to sign an approved form acknowledging receipt of the form mentioned in paragraph (a); and
 - (c) give the original of the form mentioned in paragraph (a) to the buyer and keep a copy of the form.

Maximum penalty—200 penalty units.

- (5) A proceeding against a motor dealer or chattel auctioneer for an offence against this section does not affect any civil liability of any person, including the motor dealer or chattel

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auctioneer, arising out of the same facts that constitute the offence.

- (6) Subsections (2) and (4)(a)(ii) do not apply to the extent that a security interest in the motor vehicle is registered under the *Personal Property Securities Act 2009* (Cwlth).
- (7) In this section—
sold includes sold on consignment.

Division 4 Cooling-off period

83 Definitions for div 4

In this division—

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

cooling-off period see section 84.

non-refundable deposit see sections 91(1) and 92(1).

used motor vehicle does not include—

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

84 Meaning of *cooling-off period*

- (1) The *cooling-off period* for the purchase of a used motor vehicle from a motor dealer starts on the day a contract for the purchase of the vehicle is enforceable against the motor dealer.

(2) The *cooling-off period* for the purchase of a used motor vehicle ends—

- (a) if the motor dealer’s actual close of business on the motor dealer’s next business day is 5p.m. or later—at the time of the motor dealer’s actual close of business on that business day; or

Example 1—

Assume the contract is entered into on Friday and is immediately enforceable. Assume also the cooling-off period is not affected by public holidays and that, on each day the motor dealer is open for business, the motor dealer’s actual close of business is not before 5p.m. The cooling-off period ends at the time of the motor dealer’s actual close of business on the following Saturday.

Example 2—

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

- (b) if the motor dealer’s actual close of business on the motor dealer’s next business day is earlier than 5p.m.—at the time of the motor dealer’s usual close of business on the business day immediately following the next business day; or

Example—

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

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

85 Application of div 4

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

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

- (1) A motor dealer must not advertise or display for sale a motor vehicle for sale on consignment unless it is advertised or displayed for sale as a vehicle that is not subject to a cooling-off period in the way provided under a regulation.
Maximum penalty—100 penalty units.
- (2) Subsection (1) does not apply to a sale on consignment of a motor vehicle owned by a motor dealer or chattel auctioneer.

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

- (1) This section applies if a used motor vehicle is not subject to any prior contract with a prospective buyer for its sale.

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- (2) A motor dealer must give to the prospective buyer of the vehicle a written statement in the approved form under this section.

Maximum penalty—200 penalty units.

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

Maximum penalty—200 penalty units.

- (6) The motor dealer must keep a copy of the statement and make it available for immediate inspection by an inspector who asks to see it.

Maximum penalty—100 penalty units.

88 Option to purchase during cooling-off period

- (1) This section applies if a used motor vehicle is subject to a prior contract with a prospective buyer that is not immediately enforceable.

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- (2) The motor dealer may give not more than 1 other person (*option holder*) an option to purchase the vehicle even though the vehicle is subject to a prior contract.
- (3) If the motor dealer gives an option to purchase the motor vehicle to someone else while an option to purchase is still current, the dealer commits an offence.
Maximum penalty—100 penalty units.
- (4) The motor dealer must give the option holder a written statement in the approved form under this section.
Maximum penalty—200 penalty units.
- (5) The statement must include the following—
 - (a) the motor vehicle, clearly identified, to which the statement relates;
 - (b) the names and addresses of the motor dealer and option holder;
 - (c) the option to purchase is conditional on a prior contract for the sale of the vehicle being avoided by the buyer under the prior contract;
 - (d) the option holder has no legally enforceable rights under the option to purchase the vehicle, unless the prior contract is avoided;
 - (e) when the option holder may exercise the holder's rights under the option;
 - (f) the day and time when the statement is given;
 - (g) the amount of non-refundable deposit forfeited by the option holder if the holder declines to enter into a contract for the purchase of the vehicle for any reason other than because the prior contract was not avoided;
 - (h) any other thing prescribed under a regulation.
- (6) The statement must be signed and dated by the option holder and the motor dealer or someone authorised or apparently authorised to sign for the motor dealer.

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- (7) The motor dealer or authorised person must give the statement to the option holder immediately before the option holder signs the option to purchase the vehicle.

Maximum penalty—200 penalty units.

- (8) The motor dealer must keep a copy of the statement and make it available for immediate inspection by an inspector who asks to see it.

Maximum penalty—100 penalty units.

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

- (1) This section applies if a person (*buyer*) has purchased a used motor vehicle and—

- (a) the buyer has not been given the statement under section 87; or
(b) the statement has been given to the buyer, but the statement is defective in a material particular.

- (2) The buyer, by written notice given to the motor dealer, may avoid the contract for the sale of the used motor vehicle.

- (3) The notice must be given to the motor dealer within 7 days after the day property in the vehicle passes to the buyer.

- (4) If the contract is avoided under this section, the motor dealer—

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

90 Contract must contain cooling-off clause

- (1) A contract for the sale of a used motor vehicle by a motor dealer must contain a clause clearly headed 'COOLING-OFF PERIOD' stating the following—

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- (a) the day and time the cooling-off period starts;
 - (b) the day and time the cooling-off period ends;
 - (c) property in the motor vehicle does not pass to the buyer until the end of the cooling-off period, unless the buyer takes physical possession of the vehicle for a purpose other than—
 - (i) a vehicle inspection; or
 - (ii) a test drive;
 - (d) the buyer or the buyer's agent may possess the vehicle during the cooling-off period, but only for the purpose of having the vehicle independently inspected or test driving the vehicle;
 - (e) the buyer may avoid the contract at any time during the cooling-off period by giving written notice to that effect to the dealer in accordance with this Act;
 - (f) the amount of any non-refundable deposit paid by the buyer if the contract is avoided during the cooling-off period;
 - (g) if the contract is avoided during the cooling-off period, the motor dealer must return to the buyer—
 - (i) any trade-in vehicle offered by the buyer that the motor dealer has taken possession of; and
 - (ii) any deposit paid by the buyer, less the amount of non-refundable deposit.
- (2) If the contract does not comply with subsection (1), the buyer, by written notice given to the motor dealer, may avoid the contract for the sale of the used motor vehicle.
- (3) The notice must be given to the motor dealer within 7 days after the day property in the vehicle passes to the buyer.

91 Consideration for cooling-off period

- (1) The consideration payable for the cooling-off period for the purchase of a used motor vehicle (the *non-refundable*

deposit) is the amount prescribed or worked out under a regulation.

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

92 Consideration for option

- (1) The consideration payable for an option for the purchase of a used motor vehicle (also a *non-refundable deposit*) under section 88 is the amount prescribed or worked out under a regulation.
- (2) If the option holder declines to enter into a contract for the purchase of the vehicle for any reason other than because the prior contract was not avoided, the amount of non-refundable deposit is forfeited by the option holder.
- (3) If the option holder enters into a contract for the purchase of the vehicle, the amount of non-refundable deposit paid for the option is taken to be the non-refundable deposit for the cooling-off period.
- (4) If no consideration is paid in relation to the option—
 - (a) the motor dealer is taken to have waived the payment of the non-refundable deposit for the option; and

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- (b) the option is enforceable by the option holder against the motor dealer despite the absence of consideration.

93 Harassment or coercion

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

Maximum penalty—200 penalty units or 2 years imprisonment.

94 Property does not pass during cooling-off period

- (1) Property in a used motor vehicle subject to a cooling-off period does not pass to the buyer of the vehicle until the end of the cooling-off period.
- (2) Property in a motor vehicle offered to the motor dealer as a trade-in does not pass to the dealer until the end of the cooling-off period.
- (3) A deposit, other than a non-refundable deposit, given to a motor dealer by a buyer of a used motor vehicle from the dealer remains the property of the buyer until the end of the cooling-off period.

95 Buyer may avoid contract during cooling-off period

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

96 Procedure for avoidance

- (1) A buyer of a used motor vehicle who wishes to avoid the contract to purchase the vehicle must give the motor dealer or a person apparently working for the motor dealer at the motor dealer's place of business a written notice indicating that the buyer terminates the contract.

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- (2) The notice must be given before the cooling-off period ends.
 - (3) Subsection (1) does not limit the *Acts Interpretation Act 1954*, part 10.

97 What happens when contract avoided

- (1) Notice given under section 96 brings the contract, and any related contract, to an end.
- (2) If the motor dealer to whom notice is given has given an option to purchase the motor vehicle to an option holder under section 88, the motor dealer must immediately advise the option holder that—
 - (a) the prior contract has been avoided; and
 - (b) a contract to purchase the vehicle must be entered into before the end of the motor dealer’s next business day or any non-refundable deposit is forfeited.
- (3) In this section—
related contract includes—
 - (a) a contract about the provision of finance to purchase the vehicle; and
 - (b) a contract of insurance for the vehicle.

98 Consideration for used motor vehicle during cooling-off period

- (1) A motor dealer may accept a trade-in or other consideration from a buyer of a used motor vehicle before the end of the cooling-off period.
- (2) However, the motor dealer must not deal in the trade-in or other consideration during the cooling-off period.
Maximum penalty—200 penalty units or 1 year’s imprisonment.

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- (3) The motor dealer must return the trade-in or other consideration immediately to the buyer, at no cost to the buyer, if the buyer avoids the contract under section 96.

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

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

Division 5 Statutory warranty

99 Definitions for div 5

In this division—

defect see section 100.

defect notice see section 108(1).

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

repair period see section 111(2).

statutory warranty means the warranty under section 106.

time of taking possession, in relation to a vehicle, means when the buyer of the vehicle takes possession of the vehicle under a contract for its purchase from the motor dealer.

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

Editor’s note—

Warranted vehicle and *unwarranted vehicle* are defined in schedule 2 (Dictionary).

warranty advice see section 110(2).

warranty period see section 101.

100 Meaning of *defect*

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

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

101 Meaning of *warranty period*

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

- (a) the vehicle travels 5000km since the time of taking possession;
- (b) 5p.m. on—
 - (i) the day 3 months after the time of taking possession if that day—
 - (A) is not a Sunday or public holiday; and
 - (B) the motor dealer’s place of business is open for business; or
 - (ii) the first day, after the day 3 months after the time of taking possession, that—
 - (A) is not a Sunday or public holiday; and
 - (B) the motor dealer’s place of business is open for business.

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

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- (a) the vehicle travels 1000km since the time of taking possession;
- (b) 5p.m. on—
 - (i) the day 1 month after the time of taking possession if that day—
 - (A) is not a Sunday or public holiday; and
 - (B) the motor dealer's place of business is open for business; or
 - (ii) the first day, after the day 1 month after the time of taking possession, that—
 - (A) is not a Sunday or public holiday; and
 - (B) the motor dealer's place of business is open for business.
- (3) The warranty period under subsection (1) or (2) is extended by 1 day for each day or part of a day the warranted vehicle is not in the possession of the buyer of the vehicle if—
 - (a) the buyer has complied with section 108(1); and
 - (b) a defect in the vehicle is being repaired by, or at the direction of, the warrantor of the vehicle under the statutory warranty.

102 Application of div 5

- (1) This division applies to each warranted vehicle sold by a motor dealer as owner of the vehicle or on consignment for another motor dealer or chattel auctioneer.
- (2) This division does not apply to the sale of a motor vehicle by a motor dealer—
 - (a) to another motor dealer or a chattel auctioneer; or
 - (b) on consignment for a person who is not a chattel auctioneer or motor dealer.

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

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

Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

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

104 Waiver of statutory warranty for restorable vehicles

- (1) A motor dealer must, before a proposed buyer enters into a contract for the purchase of a restorable vehicle, give the proposed buyer a written notice stating that the buyer may waive the statutory warranty for the vehicle.

- (2) If the proposed buyer agrees to purchase the vehicle, the proposed buyer may waive the statutory warranty for the vehicle by signing the notice before the proposed buyer enters into a contract for the sale of the vehicle.

- (3) The notice must clearly identify the vehicle to which it relates.

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

105 Motor dealer to give proposed buyer notice about statutory warranty

- (1) A motor dealer must, before a contract for the purchase of a warranted vehicle from the motor dealer is entered into, give the proposed buyer of the vehicle a notice in the approved form.

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Maximum penalty—100 penalty units.

- (2) A motor dealer must, before a contract for the purchase of an unwarranted vehicle, or a restorable vehicle for which the proposed buyer has signed a notice waiving the statutory warranty under section 104, from the motor dealer is entered into, give the proposed buyer of the vehicle notice in the approved form that the vehicle does not have a statutory warranty.

Maximum penalty—100 penalty units.

- (3) The proposed buyer must acknowledge receipt of a notice given under subsection (1) or (2) by signing a copy of it.

106 Statutory warranty

- (1) The warrantor of a warranted vehicle warrants that—
- (a) the vehicle is free from defects at the time of taking possession and for the warranty period; and
 - (b) defects in the vehicle reported during the warranty period will be repaired by the warrantor free of charge.
- (2) In this section—
- defects* does not include defects not covered by the statutory warranty.

107 Defects not covered by statutory warranty

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

- (a) a defect in the vehicle’s paintwork or upholstery that should have been apparent on any reasonable inspection of the vehicle before the time of taking possession;
- (b) a defect after the time of taking possession—
 - (i) arising from or incidental to any accidental damage to the vehicle; or
 - (ii) arising from the buyer’s misuse or negligence; or

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- (iii) in an accessory to the vehicle not fitted to the vehicle when sold to the buyer;
 - (c) a defect in something else prescribed by regulation.

108 Buyer's obligations under statutory warranty

- (1) If the buyer of a warranted vehicle believes the vehicle has a defect the warrantor of the vehicle is obliged to repair under this division, the buyer must give the warrantor written notice of the defect (*defect notice*) before the end of the warranty period and—
 - (a) if the warranted vehicle is 200km or less from the warrantor's place of business when the defect notice is given, deliver the vehicle to—
 - (i) the warrantor to repair the defect; or
 - (ii) a qualified repairer nominated by the warrantor, by signed writing given to the buyer of the vehicle, to repair the defect; or
 - (b) if the warranted vehicle is more than 200km from the warrantor's place of business when the defect notice is given—
 - (i) deliver the warranted vehicle to the qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle and nearest to the vehicle to repair the defect; or
 - (ii) deliver, at the warrantor's expense, the warranted vehicle to another qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect.
- (2) The buyer is taken to deliver the vehicle and the warrantor is taken to have possession of the vehicle if the buyer makes reasonable efforts to deliver the vehicle under this section but is unable to do so because the warrantor, or the qualified repairer nominated by the warrantor, refuses to accept delivery of the vehicle.

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(3) The place of delivery under subsection (1)(a)(ii) must not be more than 20km from the warrantor's place of business, unless the warrantor and the buyer otherwise agree.

(4) In this section—

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

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

109 Warrantor to record particulars of extension of warranty period

The warrantor must keep a record, in the way prescribed under a regulation, of the day the warranted vehicle is delivered to the warrantor or nominated qualified repairer under section 108 and the day the vehicle is returned to the buyer.

Maximum penalty—100 penalty units.

110 Warrantor to advise whether defect covered by statutory warranty

(1) This section applies if a defect notice is given, and the vehicle is delivered, under section 108.

(2) The warrantor must advise the buyer in writing (*warranty advice*) whether the warrantor accepts or refuses to accept that the defect is covered by the statutory warranty.

(3) If the warrantor fails to give the warranty advice within 5 business days after receiving the defect notice and delivery of the vehicle, the warrantor is taken to have given a warranty advice accepting that the defect is covered by the statutory warranty.

- (4) In this section—

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

111 Warrantor’s obligation to repair defects

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

Maximum penalty—200 penalty units.

- (3) If the warrantor nominates someone else to repair the vehicle, the warrantor must advise the buyer of the other person’s name and the address where the defect is to be repaired.
- (4) The warrantor is taken to have repaired the defect if the part of the vehicle affected by the defect is repaired so that it can be reasonably relied on to perform its intended function.
- (5) The warrantor’s obligation to repair the defect under this section continues even though the warrantor is no longer carrying on the business, or performing the activities, of a motor dealer or chattel auctioneer.

112 Warrantor’s failure to repair

- (1) This section applies if the warrantor has by warranty advice or otherwise—
- (a) refused to accept that the defect is covered by the statutory warranty; or
- (b) accepted that the defect is covered by the statutory warranty but—

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- (i) failed to repair a defect within the repair period; or
 - (ii) failed to repair the defect so that the defective part can be reasonably relied on to perform its intended function.
- (2) The buyer may apply, as provided under the QCAT Act, to QCAT for an order under this section.
- (3) Without limiting the orders QCAT may make under the QCAT Act, section 13, QCAT may make the following orders—
 - (a) an order that the defect is or is not a defect covered by the statutory warranty;
 - (b) an order extending the warranty period for the warranted vehicle to a specified date;
 - (c) an order declaring the warranted vehicle is covered by the statutory warranty until a specified date.
- (4) Also, QCAT may make an order that the warrantor pay to the buyer a stated amount QCAT decides is the reasonable cost of having a defect repaired if—
 - (a) the warrantor has, by warranty advice or otherwise, refused to accept that the defect is covered by the statutory warranty; and
 - (b) the buyer has had the defect repaired by another person; and
 - (c) QCAT decides that the defect was one to which the statutory warranty applied.
- (5) QCAT 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 order is to be effective to the date the warranty period is to end, and the period during which the vehicle was able to be used by the buyer, taken together, are not more than—

- (i) for a class A warranted vehicle—3 months; or
 - (ii) for a class B warranted vehicle—1 month.
- (6) If, after the matter is heard by QCAT, an order is made by QCAT in the buyer’s favour and the warrantor contravenes the order, the contravention is a ground for starting disciplinary proceedings under section 217.
- (7) Subsection (6) does not limit any right the buyer may have to enforce the order.

113 Applications for more than prescribed amount

- (1) This section applies if—
- (a) an application under section 112 may be made to QCAT; and
 - (b) the application seeks the payment of an amount (*application amount*) greater than the prescribed amount.
- (2) In a provision of this division about the application—
- (a) a reference to QCAT 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 necessary changes as if QCAT were the court.
- (3) In this section—

prescribed amount means the prescribed amount as defined under the QCAT Act.

Division 6 General

114 Registered office

A motor dealer’s *registered office* is—

- (a) for a motor dealer who is a principal licensee—

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- (i) the place the dealer specifies in the dealer's application for a motor dealer 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 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.

115 Motor dealer must notify chief executive of change in place of business etc.

- (1) A motor dealer who is a principal licensee must, if the motor dealer changes the place where the motor dealer carries on the motor dealer's principal place of business notify the chief executive in the approved form of the change within 14 days after the change.

Maximum penalty—200 penalty units.

- (2) A motor dealer who is a principal licensee must notify the chief executive in the approved form of the closure of any place where the dealer carries on business within 14 days after the closure.

Maximum penalty—200 penalty units.

- (3) A motor dealer who is a principal licensee must notify the chief executive in the approved form of the opening of any place where the dealer carries on business within 14 days after the opening.

Maximum penalty—200 penalty units.

- (4) A motor dealer who is an employed licensee must notify the chief executive in the approved form of any change in the

motor dealer's business address within 14 days after the change.

Maximum penalty—200 penalty units.

116 Display and publication of licensee's name

- (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 dealer's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

117 Principal licensee to keep employment register

- (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, and keep entered, in the employment register—
 - (a) the name, and the other particulars that may be prescribed under a regulation, of each person (*employee*) who is employed as an employed licensee or motor salesperson at the place; and

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- (b) if the employee is a motor salesperson, the activities the salesperson is authorised to perform for the dealer during the salesperson's employment by the motor dealer.

Maximum penalty—200 penalty units.

- (3) The motor dealer must—
 - (a) enter the particulars about each employee, and for each motor salesperson, the activities 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 particulars or activities, correct the entry in the way prescribed under a regulation immediately after the change.

Maximum penalty—200 penalty units.

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

118 Motor dealer to keep transactions register

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

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

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

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

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

(5) In this section—

motor dealer—

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

transaction means any of the following—

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

119 Motor dealer to obtain statement from seller of vehicle

(1) A motor dealer must, when buying a motor vehicle or accepting a motor vehicle for sale on consignment from a person (*seller*) in the course of carrying on the motor dealer’s business, 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.

(2) The motor dealer must—

- (a) keep a copy of the statement at the motor dealer’s place of business; and
- (b) give a copy to the seller; and

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- (c) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

- (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 or chattel auctioneer.

120 Motor dealer to give statement to buyer of vehicle

- (1) A motor dealer must, when selling a motor vehicle, including when selling on consignment, to a person (*buyer*), give to the buyer a statement, signed by the motor dealer, stating the particulars about the vehicle's owner immediately before the sale and the vehicle that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

- (2) The motor dealer must—
 - (a) keep a copy of the statement at the motor dealer's place of business; and
 - (b) give a copy of the statement to the buyer immediately after it is signed; and
 - (c) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

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

121 Contract of sale

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

Maximum penalty—200 penalty units.

- (2) The motor dealer must—
 - (a) give 1 copy of the contract to each other person signing the contract immediately after it is signed; and
 - (b) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

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

Division 7 Offences

122 **Acting as motor dealer**

- (1) A person must not carry on the business of a motor dealer unless—
 - (a) the person holds a motor dealer licence; and
 - (b) the activities performed in the carrying on of business as a motor dealer are authorised under the person's licence.

Maximum penalty—400 penalty units or 2 years imprisonment.

- (2) Without limiting the ways a person may carry on the business of a motor dealer, a person *carries on business* as a motor dealer if the person—
 - (a) advertises or notifies or states that the person carries on the business of motor dealing, either 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, either generally or in relation to a single transaction.

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- (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.

123 Pretending to be motor salesperson

- (1) A person must not act as a motor salesperson unless the person holds a registration certificate as a motor salesperson.
Maximum penalty—200 penalty units.
- (2) In this section—
act as a motor salesperson, for a person, includes hold out that the person is a motor salesperson.

124 Motor dealer must not act for more than 1 party

- (1) A motor dealer must not act for more than 1 party to a transaction.
Maximum penalty—200 penalty units.
- (2) If the motor dealer acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made.

125 Production of licence or registration certificate

- (1) A motor dealer must, if asked by a person with whom the dealer is dealing, produce the dealer licence for inspection by the person.
Maximum penalty—100 penalty units.
- (2) A motor salesperson must, if asked by a person with whom the salesperson is dealing, produce the salesperson's registration certificate for inspection by the person.
Maximum penalty—100 penalty units.

126 Employment of persons in motor dealer business

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

Maximum penalty—200 penalty units.

- (2) A principal licensee who is an individual and carries on the business of a motor dealer must not employ, as a registered employee for the business, himself or herself or another individual with whom the principal licensee carries on business as a motor dealer.

Maximum penalty—200 penalty units.

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

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 252—200 penalty units; or
- (b) for a corporation—1000 penalty units.

Part 4 Chattel auctioneers

Division 1 Chattel auctioneers' authorisation and responsibilities

127 What a chattel auctioneer licence authorises

- (1) A chattel auctioneer licence authorises the holder of the licence (a *chattel auctioneer*) to perform the activity of selling or attempting to sell or offering for sale or resale any goods by way of auction.

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

auction period, for a chattel auctioneer for the sale of goods, means a period for which the chattel auctioneer is appointed under section 131 or otherwise authorised or permitted under this or another Act to sell the goods.

128 Responsibility for acts and omissions of trainee chattel auctioneers

- (1) A chattel auctioneer must take reasonable steps to ensure each trainee chattel auctioneer under the chattel auctioneer's supervision and instruction is properly supervised and instructed and complies with this Act.
- (2) A chattel auctioneer who fails to comply with subsection (1) is liable to disciplinary action under part 8, division 2.

Division 2 Conduct provisions

Subdivision 1 Carrying on business

129 Carrying on of business under chattel auctioneer licence

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

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

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

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

Maximum penalty—200 penalty units.

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

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 252—200 penalty units; or
 - (b) for a corporation—1000 penalty units.
- (3) An individual must not be in charge of a chattel auctioneer's business at more than 1 place of business.

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Maximum penalty—200 penalty units.

Subdivision 2 Appointment

131 Appointment of chattel auctioneer

- (1) A chattel auctioneer who is asked by a person (*client*) to perform an activity (*service*) for the client must not act for the client unless—
 - (a) the client first appoints the chattel auctioneer in writing under this section; or
 - (b) a previous appointment by the client is assigned to the chattel auctioneer under the terms of the appointment or under section 133 and the appointment is in force.

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, for each service—
 - (a) state the service to be performed by the chattel auctioneer and how it is to be performed; and
 - (b) state the day set for the auction; and
 - (c) state, in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to any amount that may be prescribed under a regulation; and
 - (d) state—
 - (i) the fees, charges and any commission payable for the service; and
 - (ii) the expenses, including advertising, marketing and travelling expenses, the chattel auctioneer is authorised to incur in connection with the

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- performance of each service or category of service;
and
- (iii) the source and the estimated amount or value of any rebate, discount, commission or benefit that the chattel auctioneer may receive in relation to any expenses the chattel auctioneer is authorised to incur in connection with the performance of the service; and
 - (iv) any condition, limitation or restriction on the performance of the service; and
- (e) state when the fees, charges and any commission for the service become payable; and
 - (f) if the service to be performed is the sale of goods and commission is payable in relation to the service and expressed as a percentage of an estimated sale price, state that the commission is worked out only on the actual sale price; and
 - (g) if the appointment is for a sole or exclusive agency, state the date the appointment ends.
- (4) A continuing appointment must state—
 - (a) the date the appointment ends; and
 - (b) that the appointment may be revoked on the giving of 90 days notice, or some lesser period (not less than 30 days) agreed by the parties.
 - (5) The notice revoking a continuing appointment must be by signed writing given to the other party.
 - (6) The appointment must be signed and dated by the client and the chattel auctioneer or someone authorised or apparently authorised to sign for the chattel auctioneer.
 - (7) The chattel auctioneer must give a copy of the signed appointment to the client.
- Maximum penalty—200 penalty units.
- (8) This section does not apply if the service to be performed is the sale of livestock.

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132 Form of appointment

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

133 Proposal for assignment of appointments

- (1) This section applies if a chattel auctioneer who holds appointments from clients to perform services for the clients under section 131 proposes to assign the appointments to another chattel auctioneer (*proposed assignee*) without changing the terms of the appointment.
- (2) However, this section does not apply to the assignment of an appointment if—
 - (a) the terms of the appointment authorise the assignment of the appointment; and
 - (b) the assignment is made in accordance with the terms of the appointment.
- (3) At least 14 days before the chattel auctioneer assigns the appointments, the chattel auctioneer must give each client written notice of the proposed assignment.
- (4) The notice must state the following—
 - (a) the proposed assignee's name;
 - (b) that the appointments are to be assigned without changing the terms of the appointment;
 - (c) the client may agree or refuse to agree to the proposed assignment;
 - (d) when the proposed assignment is to take effect.
- (5) If the client agrees to the assignment and the chattel auctioneer assigns the appointment under this section, the appointment is taken, for section 131, to be an appointment by

the client of the proposed assignee and to continue to have effect according to its terms.

Subdivision 3 Auctions of goods

134 Buyer's premium

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

Maximum penalty—200 penalty units.

- (3) The chattel auctioneer does not act for the buyer of the goods only because the chattel auctioneer accepts a buyer's premium from the buyer.
- (4) In this section—

buyer's premium means an amount, not more than an amount prescribed or worked out under a regulation, payable to the chattel auctioneer by a buyer on the purchase of goods.

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

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Subdivision 4 Recovery of reward or expense

135 Commission may be claimed only in relation to actual amounts

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

Maximum penalty—200 penalty units.

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

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

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

137 Restriction on recovery of reward or expense above amount allowed

- (1) A person is not entitled to sue for, or recover or retain, a reward for the performance of an activity as a chattel

auctioneer that is more than the amount of the reward stated in the appointment given under section 131.

- (2) However, if the reward for the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or retain, a reward more than the amount allowed under the regulation.
- (3) A person is not entitled to sue for, or recover or retain, expenses for the performance of an activity as a chattel auctioneer that are more than the amount of the expenses stated in the appointment given under section 131 and actually expended.
- (4) However, if the amount of expenses that may be incurred in relation to the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or retain, an amount more than the amount allowed under the regulation.
- (5) Subsection (2) does not prevent the person suing for, recovering or retaining, in addition to the amount allowed under a regulation for the reward, an amount for GST payable for a supply.
- (6) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a chattel auctioneer other than as provided by this section commits an offence.

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

138 Excess commission etc. to be repaid

- (1) This section applies if—
 - (a) a person is convicted of an offence against section 135(2), 136(2) or 137(6); and
 - (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an activity an amount to which the person was not entitled.

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- (2) The court must order the person to pay the amount to the client.
- (3) The order must be made whether or not any penalty is imposed on the conviction.
- (4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

Subdivision 5 Interests in goods

139 Definition for sdiv 5

In this subdivision—

obtain includes being in any way concerned in obtaining.

140 Beneficial interest—options

- (1) This section applies to goods placed by a person (*client*) with a chattel auctioneer for sale.
- (2) The chattel auctioneer commits an offence if the chattel auctioneer obtains from the client an option to purchase the goods in which the chattel auctioneer has a beneficial interest.
Maximum penalty—200 penalty units or 3 years imprisonment.
- (3) A trainee chattel auctioneer employed by the chattel auctioneer or under the supervision and instruction of the chattel auctioneer commits an offence if the trainee obtains from the client an option to purchase the goods in which the trainee has a beneficial interest.
Maximum penalty—200 penalty units or 3 years imprisonment.
- (4) A chattel auctioneer must not sell goods if the chattel auctioneer obtains a beneficial interest in an option to purchase the goods.

Maximum penalty—200 penalty units or 3 years imprisonment.

141 Beneficial interest—other than options

(1) This section applies to goods placed by a person (*client*) with a chattel auctioneer for sale, but does not apply if section 140 applies.

(2) The chattel auctioneer commits an offence if the chattel auctioneer obtains a beneficial interest in the goods.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) A trainee chattel auctioneer employed by the chattel auctioneer or under the supervision and instruction of the chattel auctioneer commits an offence if the trainee obtains a beneficial interest in the goods.

Maximum penalty—200 penalty units or 3 years imprisonment.

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

(a) the person—

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

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

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

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

(b) no commission or other reward is payable in relation to the sale; and

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- (c) the client is in substantially as good a position as the client would be if the goods were sold for fair market value.
- (5) If the chattel auctioneer or trainee chattel auctioneer has not obtained the acknowledgement mentioned in subsection (4)(a)(i) and the chattel auctioneer or trainee knows, or ought to know, an associate of the chattel auctioneer or trainee intends bidding at the auction, the chattel 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 chattel auctioneer or trainee and intends bidding at the auction.
- (6) If the chattel auctioneer or trainee chattel auctioneer complies with subsection (5), the chattel auctioneer or trainee is taken to have satisfied subsection (4)(a)(i).

142 Return of beneficial interest if in form of commission

- (1) This section applies if—
 - (a) a person is convicted of an offence against section 141(2) or (3); and
 - (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an activity an amount of commission to which the person was not entitled.
- (2) The court must order the person to pay the amount to the client.
- (3) The order must be made whether or not any penalty is imposed on the conviction.
- (4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

143 Non-application of s 141 for particular livestock sales

Section 141 does not apply in relation to livestock sales if the chattel auctioneer obtains the client's written acknowledgement that the client—

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

Subdivision 6 Sales of livestock

144 Sales of livestock

- (1) This section applies to sales of livestock by a chattel auctioneer.
- (2) The chattel auctioneer may pay over the proceeds from the sale to the person (*client*) appointing the chattel auctioneer to conduct the auction only if—
 - (a) the chattel auctioneer—
 - (i) has known the client for at least 1 year; and
 - (ii) considers the client is a person of good repute; and
 - (iii) has no reason to believe the client is not lawfully entitled to sell the livestock; or
 - (b) the chattel 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) considers 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.

[s 145]

(4) In this section—

referee means a person whom the chattel auctioneer has known for at least 1 year and considers is a person of good repute.

145 Protection for chattel auctioneer

- (1) This section applies if a court finds, in relation to livestock sold by a chattel auctioneer, that the client was not lawfully entitled to sell the livestock.
- (2) A chattel auctioneer who, acting in good faith and without negligence, complies with section 144 is not liable to the owner of the livestock only because the chattel auctioneer took possession or gave delivery of the livestock.

Subdivision 7 Code of conduct

146 Code of conduct

A regulation may prescribe a code of conduct about chattel auctioneering practice that may include the following—

- (a) setting conduct standards for chattel auctioneers, employed licensees and trainee chattel auctioneers;
- (b) establishing principles for fair trading;
- (c) providing for a system of complaint resolution.

147 Complaints about conduct

- (1) A person aggrieved by the conduct of a chattel auctioneer or trainee chattel auctioneer may complain in writing to the chief executive about 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.

Note—

Breach of a code of conduct is a ground for starting disciplinary proceedings under section 217.

- (3) The investigation may take place and action may be taken against a person who was a chattel auctioneer or trainee chattel auctioneer even though the person is no longer a chattel auctioneer or trainee chattel auctioneer.

Subdivision 8 Sales of written-off vehicles

148 Announcements before auction—written-off vehicle

- (1) A chattel auctioneer must announce, immediately before the auction of a motor vehicle that is an unregistered written-off vehicle, that the vehicle is a written-off vehicle and state—
- (a) if the vehicle is a repairable write-off—that the vehicle is a repairable write-off and must pass a written-off vehicle inspection under a regulation under the *Transport Operations (Road Use Management) Act 1995* before it can be registered; or
 - (b) if the vehicle is a statutory write-off—that the vehicle can not be registered.

Maximum penalty—100 penalty units.

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

Division 3 Sale of motor vehicles by auction

149 Obligations of chattel auctioneer

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

Maximum penalty—200 penalty units.

- (3) In a proceeding for an offence against subsection (2), it is a defence for the defendant to prove that the defendant took all reasonable steps to ensure subsection (2) was complied with.
- (4) The selling agent 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 responsible licensee guarantees the buyer gains clear title to the vehicle at the time property passes; and
 - (c) any other particulars that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

- (5) The selling agent must ask the buyer to sign an approved form acknowledging receipt of the form mentioned in subsection (4).

- (6) The selling agent must—
- (a) give the original of the form mentioned in subsection (4) to the buyer; and
 - (b) keep a copy of the form; and
 - (c) make the copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

- (7) A proceeding against a chattel auctioneer or motor dealer for an offence against this section does not affect any civil liability of any person, including the chattel auctioneer or dealer, arising out of the same facts that constitute the offence.
- (8) Subsections (2) and (4)(b) do not apply to the extent that a security interest in the motor vehicle is registered under the *Personal Property Securities Act 2009* (Cwlth).
- (9) In this section—
- responsible licensee* means the licensee who, under subsection (2), must ensure that the buyer of a motor vehicle gains clear title to the vehicle.

Division 4 Statutory warranty

150 Definitions for div 4

In this division—

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

defect see section 151.

defect notice see section 162(1).

repair period see section 165(2).

statutory warranty means the warranty under section 160.

[s 151]

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

warrantor, of a warranted vehicle, see section 158.

warranty advice see section 164(2).

warranty period see section 152.

151 Meaning of *defect*

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.

152 Meaning of *warranty period*

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

- (a) the vehicle travels 5000km since the time of taking possession;
- (b) 5p.m. on—
 - (i) the day 3 months after the time of taking possession if that day—
 - (A) is not a Sunday or public holiday; and
 - (B) the warrantor's place of business is open for business; or
 - (ii) the first day, after the day 3 months after the time of taking possession, that—
 - (A) is not a Sunday or public holiday; and

-
- (B) the warrantor's place of business is open for business.
 - (2) Subject to subsection (3), the *warranty period* of a class B warranted vehicle starts at the time of taking possession and ends when the first of the following happens or is reached—
 - (a) the vehicle travels 1000km since the time of taking possession;
 - (b) 5p.m. on—
 - (i) the day 1 month after the time of taking possession if that day—
 - (A) is not a Sunday or public holiday; and
 - (B) the warrantor's place of business is open for business; or
 - (ii) the first day, after the day 1 month after the time of taking possession, that—
 - (A) is not a Sunday or public holiday; and
 - (B) the warrantor's place of business is open for business.
 - (3) The warranty period under subsection (1) or (2) is extended by 1 day for each day or part of a day the warranted vehicle is not in the possession of the buyer of the vehicle if—
 - (a) the buyer has complied with section 162; and
 - (b) a defect in the vehicle is being repaired by, or at the direction of, the warrantor of the vehicle under the statutory warranty.

153 Application of div 4

- (1) This division applies to each warranted vehicle sold by a chattel auctioneer as owner of the vehicle or on consignment for another chattel auctioneer or a motor dealer.
- (2) This part, other than sections 154, 155 and 156, does not apply to the sale of a motor vehicle by the chattel auctioneer—

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- (a) to another chattel auctioneer or a motor dealer; or
- (b) on consignment for a person who is not a chattel auctioneer or motor dealer.

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

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

Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

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

155 Bidders to register for auction of restorable vehicles

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

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

156 Announcements before auction

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

Maximum penalty—100 penalty units.

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

Example—

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

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

Maximum penalty—100 penalty units.

- (4) A chattel auctioneer does not contravene subsection (3) if—
- (a) 2 or more restorable vehicles are to be auctioned in consecutive lots; and
 - (b) immediately before the first of the vehicles in the consecutive lots is to be auctioned, the chattel auctioneer identifies the vehicles and announces that it is a condition of each of the sales that a registered bidder who purchases the vehicle is taken to waive its statutory

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warranty when the contract for its purchase is entered into.

157 Effect of sale of restorable vehicle to registered bidder

If a restorable vehicle is sold to a registered bidder at auction, the statutory warranty for the vehicle stops having effect when the contract for its purchase is entered into and the vehicle is taken, for section 159, to be an unwarranted vehicle.

158 Warrantor

For this part, the *warrantor* of a warranted vehicle is the chattel auctioneer or motor dealer who owns the vehicle immediately before the time of taking possession.

Examples—

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

159 Chattel auctioneer to give buyer notice about statutory warranty

- (1) A chattel auctioneer who sells a warranted vehicle must, immediately after the contract for its purchase is entered into, give the buyer of the vehicle a notice in the approved form.

Maximum penalty—100 penalty units.

- (2) A chattel auctioneer who sells an unwarranted vehicle or a restorable vehicle that is taken under section 157 to be an unwarranted vehicle must, immediately after the contract for its purchase is entered into, give the buyer of the vehicle notice in the approved form 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.

160 Statutory warranty

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

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

161 Defects not covered by statutory warranty

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

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

162 Buyer's obligations under statutory warranty

- (1) If the buyer of a warranted vehicle believes the vehicle has a defect the warrantor of the vehicle is obliged to repair under this part, the buyer must give the warrantor written notice of the defect (*defect notice*) before the end of the warranty period and—

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- (a) if the warranted vehicle is 200km or less from the warrantor's place of business when the defect notice is given, deliver the warranted vehicle to—
 - (i) the warrantor to repair the defect; or
 - (ii) a qualified repairer nominated by the warrantor, by signed writing given to the buyer of the vehicle, to repair the defect; or
 - (b) if the warranted vehicle is more than 200km from the warrantor's place of business when the defect notice is given—
 - (i) deliver the warranted vehicle to the qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle and nearest to the vehicle to repair the defect; or
 - (ii) deliver, at the warrantor's expense, the warranted vehicle to another qualified repairer nominated by the warrantor by signed writing given to the buyer of the vehicle to repair the defect.
- (2) The buyer is taken to deliver the vehicle and the warrantor is taken to have possession of the vehicle if the buyer makes reasonable efforts to deliver the vehicle under this section but is unable to do so because the warrantor, or the qualified repairer nominated by the warrantor, refuses to accept delivery of the vehicle.
- (3) The place of delivery under subsection (1)(a)(ii) must not be more than 20km from the warrantor's place of business, unless the warrantor and the buyer otherwise agree.
- (4) In this section—
qualified repairer, in relation to a warranted vehicle the subject of a defect notice, means a person who is, or holds the qualifications necessary to be appointed under the *Transport Operations (Road Use Management) Act 1995*, section 21 to be, an accredited person to perform vehicle safety inspections for the vehicle.

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

163 Warrantor to record particulars of extension of warranty period

The warrantor must keep a record, in the way prescribed under a regulation, of the day the warranted vehicle is delivered to the warrantor or nominated qualified repairer under section 162 and the day the vehicle is returned to the buyer.

Maximum penalty—100 penalty units.

164 Warrantor to advise whether defect covered by statutory warranty

- (1) This section applies if a defect notice is given, and the vehicle is delivered, under section 162.
- (2) The warrantor must advise the buyer in writing (*warranty advice*) whether the warrantor accepts or refuses to accept that the defect is covered by the statutory warranty.
- (3) If the warrantor fails to give the warranty advice within 5 business days after receiving the defect notice and delivery of the vehicle, the warrantor is taken to have given a warranty advice accepting that the defect is covered by the statutory warranty.
- (4) In this section—

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

165 Warrantor's obligation to repair defects

- (1) If the warrantor accepts that the defect is covered by the statutory warranty, the warrantor must repair the defect at the warrantor's expense.

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

Maximum penalty—200 penalty units.

- (3) If the warrantor nominates a qualified repairer to repair the vehicle, the warrantor must advise the buyer of the qualified repairer's name and the address where the defect is to be repaired.
- (4) The warrantor is taken to have repaired the defect if the part of the vehicle affected by the defect is repaired so that it can be reasonably relied on to perform its intended function.
- (5) The warrantor's obligation to repair the defect under this section continues even though the warrantor is no longer performing the activities of a licensee.

166 Warrantor's failure to repair

- (1) This section applies if the warrantor has by warranty advice or otherwise—
 - (a) refused to accept that the defect is covered by the statutory warranty; or
 - (b) accepted that the defect is covered by the statutory warranty but—
 - (i) failed to repair a defect within the repair period; or
 - (ii) failed to repair the defect so that the defective part can be reasonably relied on to perform its intended function.
- (2) The buyer may apply, as provided under the QCAT Act, to QCAT for an order under this section.
- (3) Without limiting the orders QCAT may make under the QCAT Act, section 13, QCAT may make the following orders—
 - (a) an order that the defect is or is not a defect covered by the statutory warranty;

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- (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, QCAT may make an order that the warrantor pay to the buyer a stated amount QCAT decides is the reasonable cost of having a defect repaired if—
- (a) the warrantor has, by warranty advice or otherwise, refused to accept that the defect is covered by the statutory warranty; and
 - (b) the buyer has had the defect repaired by another person; and
 - (c) QCAT decides that the defect was one to which the statutory warranty applied.
- (5) QCAT 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 order is to be effective to the date the warranty period is to end, and the period during which the vehicle was able to be used by the buyer, taken together, are not more than—
 - (i) for a class A warranted vehicle—3 months; or
 - (ii) for a class B warranted vehicle—1 month.
- (6) If, after the matter is heard by QCAT, an order is made by QCAT in the buyer's favour and the warrantor contravenes the order, the contravention is a ground for starting disciplinary proceedings under section 217.
- (7) Subsection (6) does not limit any right the buyer may have to enforce the order.

167 Applications for more than prescribed amount

- (1) This section applies to an application if—

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- (a) an application under section 166 may be made to QCAT;
and
 - (b) the application seeks the payment of an amount (*application amount*) greater than the prescribed amount.
- (2) In a provision of this part about the application—
- (a) a reference to QCAT 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 necessary changes as if QCAT were the court.
- (3) In this section—
- prescribed amount* means the prescribed amount as defined under the QCAT Act.

Division 5 General

168 Registered office

A chattel auctioneer's *registered office* is—

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

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

169 Chattel auctioneer must notify chief executive of change in place of business etc.

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

Maximum penalty—200 penalty units.

- (2) A chattel auctioneer who is an employed licensee must notify the chief executive in the approved form of any change in the chattel auctioneer's business address within 14 days after the change.

Maximum penalty—200 penalty units.

170 Display and publication of licensee's name

- (1) A chattel auctioneer who is a principal licensee must display at each place the chattel auctioneer carries on business, in the way that may be prescribed under a regulation—
 - (a) the chattel auctioneer's name; and
 - (b) if the chattel auctioneer is not the person in charge of the chattel auctioneer's business at the place, the name of the chattel auctioneer who is in charge at the place; and
 - (c) the other particulars that may be prescribed under a regulation.

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Maximum penalty—100 penalty units.

- (2) A chattel auctioneer who conducts an auction must display at the auction, in the way and for the period prescribed under a regulation—
- (a) the chattel auctioneer's name; and
 - (b) the other particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

- (3) A chattel auctioneer who is a principal licensee must not publish, or permit to be published, in a newspaper or elsewhere an advertisement for the chattel auctioneer's business without stating in the advertisement the particulars that may be prescribed under a regulation.

Maximum penalty—100 penalty units.

171 Principal licensee must keep employment register

- (1) A chattel auctioneer who is a principal licensee must keep a register (*employment register*) at each place where the chattel auctioneer carries on business.

Maximum penalty—200 penalty units.

- (2) The chattel auctioneer must enter, and keep entered, in the employment register—
- (a) the name, and the other particulars that may be prescribed under a regulation, of each of the following persons—
 - (i) a person who is employed by the chattel auctioneer as an employed licensee;
 - (ii) a trainee chattel auctioneer who is under the supervision and instruction of the chattel auctioneer at the place; and
 - (b) the activities the trainee chattel auctioneer is authorised to perform for the chattel auctioneer while the trainee is

under the supervision and instruction of the chattel auctioneer.

Maximum penalty—200 penalty units.

- (3) The chattel auctioneer must—
- (a) enter the particulars about each employed licensee or trainee chattel auctioneer, and the activities the employed licensee or trainee is authorised to perform, immediately after the chattel auctioneer starts to employ the employed licensee or supervise and instruct the trainee chattel auctioneer at the place; and
 - (b) if there is a change in an employed licensee's or trainee chattel auctioneer's particulars or activities, correct the entry in the way prescribed under a regulation immediately after the change.

Maximum penalty—200 penalty units.

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

172 Chattel auctioneer to obtain statement from seller of vehicle

- (1) A chattel auctioneer must, when buying a motor vehicle or accepting a motor vehicle for sale on consignment from a person (*seller*) in the course of carrying on the chattel auctioneer's business, 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.

- (2) The chattel auctioneer must—
- (a) keep a copy of the statement at the chattel auctioneer's registered office; and
 - (b) give a copy to the seller; and
 - (c) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

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

173 Chattel auctioneer to give statement to buyer of vehicle

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

Maximum penalty—200 penalty units.

- (2) The chattel auctioneer must—
 - (a) keep a copy of the statement at the chattel auctioneer's registered office; and
 - (b) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

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

Division 6 Offences

174 Acting as chattel auctioneer

- (1) A person must not perform an activity that may be done under the authority of a chattel auctioneer licence unless the person—
 - (a) holds a chattel auctioneer licence and the performance of the activity is authorised under the person's licence; or
 - (b) is otherwise permitted under this or another Act to perform the activity.

Maximum penalty—200 penalty units or 2 years imprisonment.

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

Maximum penalty—200 penalty units or 2 years imprisonment.

- (3) Without limiting the ways a person may act as a chattel auctioneer, a person *acts* as a chattel auctioneer if the person—
- (a) performs an auction for the sale or resale of goods; or
 - (b) advertises or notifies or states that the person performs auctions or is willing to perform auctions for the sale or resale of goods; or
 - (c) in any way holds out as being ready to perform auctions for the sale or resale of goods.

175 Pretending to be trainee chattel auctioneer

- (1) A person must not act as a trainee chattel auctioneer unless the person holds a registration certificate as a trainee chattel auctioneer.

Maximum penalty—200 penalty units.

- (2) In this section—

act as a trainee chattel auctioneer, for a person, includes hold out that the person is a trainee chattel auctioneer.

176 Chattel auctioneer must not act for more than 1 party

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

Maximum penalty—200 penalty units.

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

177 Production of licence or registration certificate

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

Maximum penalty—100 penalty units.

- (2) A trainee chattel auctioneer must, if asked by a person with whom the trainee is dealing, produce the trainee's registration certificate for inspection by the person.

Maximum penalty—100 penalty units.

178 Employment of persons in chattel auctioneer's business

A chattel auctioneer must not employ, as a trainee chattel auctioneer, a person the chattel auctioneer knows, or ought to know, does not hold a registration certificate as a trainee chattel auctioneer.

Maximum penalty—200 penalty units.

Part 5 Employee registration

Division 1 Categories of registered employees

179 Categories of registered employees

The following categories of registered employees are prescribed for this Act—

- (a) motor salesperson;
- (b) trainee chattel auctioneer.

180 Limited motor salesperson registration certificate

- (1) The chief executive may issue a registration certificate for a motor salesperson (a *limited motor salesperson registration certificate*) of a type prescribed under a regulation, that authorises the performance of activities that are more limited than the activities that may be performed under an unconditional registration certificate for a motor salesperson.
- (2) A regulation may prescribe—
 - (a) the activities that may be performed under a limited motor salesperson registration certificate; and
 - (b) the educational requirements for obtaining a limited motor salesperson registration certificate.

Division 2 ~~Activities authorised under registration certificate~~ Registered employees' authorisation

181 What a registration certificate authorises

- (1) A registration certificate held by a motor salesperson authorises the salesperson to perform any activity that may be performed by the motor dealer who employs the salesperson.

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- (2) A registration certificate held by a trainee chattel auctioneer authorises the trainee to perform any activity that may be performed by the chattel auctioneer who supervises the trainee.
- (3) However, a registration certificate does not authorise the holder to perform an activity that the holder is not authorised to perform because of a condition to which the certificate is subject.

Division 3 How to obtain registration

182 Steps involved in obtaining registration

- (1) A person who wishes to obtain registration as a motor sales person or trainee chattel auctioneer must be a suitable person to hold registration under part 4.
- (2) The person must apply for registration by—
 - (a) submitting an application showing, among other things, the person is eligible to obtain registration; and
 - (b) paying the prescribed fees.
- (3) In deciding the application, the chief executive must have regard to, among other things—
 - (a) the person's suitability to hold a registration certificate under this Act; and
 - (b) the person's eligibility to hold the registration certificate.

Division 4 Applications for registration

183 Application for registration

- (1) An applicant for registration must—
 - (a) be an individual; and

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- (b) apply to the chief executive in the approved form; and
 - (c) state the term of the registration being applied for; and
 - (d) establish the applicant's suitability and eligibility for registration as a registered employee; and
 - (e) provide any information the chief executive reasonably requires to decide whether the applicant is suitable and eligible to be a registered employee.
- (2) The application must be accompanied by—
- (a) an application fee prescribed under a regulation; and
 - (b) a registration issue fee prescribed under a regulation; and
 - (c) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid.

184 Requirement to give chief executive information or material about application

- (1) The chief executive may, by written notice given to an applicant for registration, 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 registration within a stated reasonable period.
- (2) The applicant is taken to have withdrawn the application if the applicant fails to comply with the chief executive's requirement within the stated reasonable period.

Division 5 Suitability of applicants

185 Suitability of applicants

- (1) A person is not a suitable person to obtain registration as a registered employee if the person is—

[s 186]

- (a) a person who has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence; or
 - (b) currently disqualified from holding a licence or registration certificate; or
 - (c) a person the chief executive decides under section 186 is not a suitable person to obtain registration as a registered employee.
- (2) An individual who is not a suitable person can not obtain registration as a registered employee.

186 Chief executive must consider suitability of applicants

- (1) The chief executive must, when deciding whether a person is a suitable person to obtain registration as a registered employee, consider the following things—
- (a) the person's character;
 - (b) whether the person held a licence or registration under a relevant Act that was suspended or cancelled within the meaning of the relevant Act;
 - (c) whether an amount has been paid from the fund because the person did, or omitted to do, something that gave rise to the claim against the fund;
 - (d) whether the person has been disqualified under a relevant Act from being—
 - (i) the holder of a licence within the meaning of the relevant Act; or
 - (ii) the holder of a registration certificate within the meaning of the relevant Act; or
 - (iii) an executive officer of a corporation;
 - (e) the person's criminal history;
 - (f) if the person is affected by bankruptcy action—
 - (i) the circumstances giving rise to the person being affected by bankruptcy action; and

- (ii) whether the person took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the person being affected by bankruptcy action; and
- (iii) whether the person is in a position to influence significantly the management of a licensee's business;
- (g) whether the person has been convicted of an offence against a relevant Act or the Administration Act;
- (h) whether the person is capable of satisfactorily performing the activities of a registered employee;
- (i) whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act;

Editor's note—

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

- (j) another thing the chief executive may consider under this Act.
- (2) If the chief executive decides a person is not a suitable person to obtain registration as a registered employee, the chief executive must give the person an information notice within 14 days after the decision is made.
- (3) In this section—

fund includes the claim fund under the repealed Act.

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

187 Investigations about suitability of applicants

- (1) The chief executive may make investigations about the applicant to help the chief executive decide whether the applicant is a suitable person to obtain registration as a registered employee.

[s 188]

- (2) Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a report about the applicant's criminal history.
- (3) The commissioner must give the report to the chief executive.
- (4) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.
- (5) If the criminal history of the applicant includes a conviction recorded against the applicant, the commissioner's report must be written.

188 Costs of criminal history report

- (1) The chief executive may require an applicant to pay the reasonable, but no more than actual, costs of obtaining a report under section 187 about the applicant.
- (2) The requirement is a *criminal history costs requirement*.
- (3) The requirement is sufficiently made of the applicant if it is made generally of applicants for, or for the renewal or restoration of, registration in the relevant approved form or notified on the department's web site for applications of that type.
- (4) The chief executive must refund to the applicant an amount paid under the requirement if—
 - (a) the chief executive refuses the application without asking for the report; or
 - (b) the applicant withdraws the application before the chief executive asks for the report.
- (5) In this section—
applicant includes proposed applicant.

189 Confidentiality of criminal history

- (1) A public service employee performing functions under this Act 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 187.

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.
- (3) The chief executive must destroy a written report about a person's criminal history as soon as practicable after considering the person's suitability to obtain registration as a registered employee.

190 Requirement to give chief executive information or material about suitability

- (1) This section applies to an applicant for registration as a registered employee or the renewal or restoration of the registration.
- (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 registration within a stated reasonable period.
- (3) The applicant is taken to have withdrawn the application if, within the stated reasonable period, the applicant fails to comply with the chief executive's requirement.

Division 6 Eligibility for registration

191 Eligibility for registration as registered employee

- (1) An individual is eligible to obtain registration as a registered employee only if the individual—

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- (a) is at least 18 years; and
 - (b) has the educational or other qualifications that may be prescribed under a regulation.
- (2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—
- (a) has a comparable qualification; or
 - (b) within 2 years before the day the individual's application for employee registration is received by the chief executive—
 - (i) has been the holder of a registration certificate under this Act; or
 - (ii) has been the holder of a comparable certificate under the repealed Act.

Division 7 Issue of registration certificate

192 Chief executive may issue or refuse to issue registration certificate

- (1) The chief executive may issue or refuse to issue a registration certificate to an applicant.
- (2) The chief executive may issue a registration certificate to an applicant only if the chief executive is satisfied—
 - (a) the applicant is a suitable person to hold the registration; and
 - (b) the applicant is eligible to obtain the registration; and
 - (c) the application is properly made.
- (3) For subsection (2)(c), the application is properly made only if it complies with section 183 and is accompanied by the things mentioned in that section.
- (4) If the chief executive refuses to issue the registration certificate, the chief executive must give the applicant an

information notice about the decision within 14 days after the decision is made.

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

193 Registration certificate—conditions

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

Example—

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

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

[s 194]

**Division 8 Renewal and restoration of
 registration certificates**

Subdivision 1 Renewal

194 Application for renewal

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

195 Chief executive may renew or refuse to renew registration certificate

- (1) The chief executive must consider the renewal application and may renew or refuse to renew the registration certificate.
- (2) The chief executive may renew the certificate only if the chief executive is satisfied—
 - (a) the registered employee is a suitable person; and
 - (b) the application is properly made; and

-
- (c) the employee meets the eligibility requirements for the certificate.
 - (3) For subsection (2)(b), an application is properly made only if it complies with section 194(2) and is accompanied by the things mentioned in that subsection.
 - (4) If the chief executive decides to refuse the application, the chief executive must give the employee an information notice within 14 days after the decision is made.

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

If an application is made under section 194, the registered employee's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the employee's application for renewal is decided under section 195 or taken to have been withdrawn under section 190(3).

Subdivision 2 Restoration

197 Application for restoration

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

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- (ii) a registration renewal fee prescribed under a regulation; and
- (iii) a registration restoration fee prescribed under a regulation; and
- (iv) if, before or when the application is made, a criminal history costs requirement is made of the former employee—the amount of the costs required to be paid.

198 Chief executive may restore or refuse to restore registration certificate

- (1) The chief executive must consider the restoration application and may restore or refuse to restore the registration certificate.
- (2) The chief executive may restore the certificate only if the chief executive is satisfied—
 - (a) the registered employee is a suitable person; and
 - (b) the application is properly made; and
 - (c) the employee meets the eligibility requirements for the certificate.
- (3) For subsection (2)(b), an application is properly made only if it complies with section 197(2) and is accompanied by the things mentioned in that subsection.
- (4) If the chief executive decides to refuse the application, the chief executive must give the employee an information notice within 14 days after the decision is made.
- (5) If the chief executive decides to restore the certificate—
 - (a) the certificate is taken to have been renewed on the day it would, apart from section 199, have expired (the *initial expiry date*); and
 - (b) to remove any doubt, a thing done during the period starting on the initial expiry date and ending on the day the certificate is restored under this section is taken to have been as validly done as it would have been if the

certificate had been renewed immediately before the initial expiry date.

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

If an application is made under section 197, the employee's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the employee's application for restoration is decided under section 198 or taken to have been withdrawn under section 190(3).

Division 9 Dealings with registration certificates

Subdivision 1 Transfer of registration certificate

200 Transfer of registration certificate prohibited

A registration certificate may not be transferred.

Subdivision 2 General

201 Amendment of registration certificate conditions

- (1) The chief executive may amend the conditions of a registration certificate—
 - (a) on the registered employee's application; or
 - (b) on the order of QCAT after a disciplinary hearing; or
 - (c) on the chief executive's own initiative.

Note—

QCAT may deal with the conditions of a person's registration certificate under section 222.

[s 201]

- (2) An application under subsection (1)(a) must be made to the chief executive in the approved form and be accompanied by the application fee prescribed under a regulation.
- (3) Before making an amendment under subsection (1)(a), the chief executive must be satisfied the registered employee 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 registered employee—
 - (i) of the particulars of the proposed amendment; and
 - (ii) that the employee 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 employee; and
 - (b) have regard to submissions made to the chief executive by the registered employee before the stated day.
- (5) Subsection (4) does not apply if the chief executive decides that the amendment must be made urgently to ensure compliance with this Act or the Administration Act.
- (6) If the chief executive decides to amend the conditions of a registration certificate under subsection (1)(c), the chief executive must give the registered employee written notice of the amendment and an information notice within 14 days after the decision is made.
- (7) The amendment takes effect—
 - (a) on the day the written notice of the amendment is given to the registered employee; or
 - (b) if a later day is stated in the notice, the stated day.
- (8) If the chief executive decides to refuse to make an amendment requested under subsection (1)(a), the chief executive must give the registered employee an information notice within 14 days after the decision is made.

202 Return of registration certificate for amendment of conditions

- (1) If the chief executive amends the conditions of a registration certificate under section 201, the chief executive may require the registered employee to produce the certificate for amendment within a stated period of not less than 14 days.
- (2) The employee must comply with the requirement, unless the person has a reasonable excuse.

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

203 Surrender of registration certificate

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

Division 10 Immediate suspension and cancellation of registration certificates

204 Immediate suspension

- (1) This section applies if the chief executive believes, on reasonable grounds, that—
 - (aa) a registered employee's registration certificate, or a renewal or restoration of the registration certificate, was obtained because of materially incorrect or misleading information; or
 - (a) both—
 - (i) an irregularity or deficiency exists in a licensee's trust account; and
 - (ii) a registered employee of the licensee may be responsible for the irregularity or deficiency; or

[s 205]

- (b) a registered employee—
 - (i) has contravened or is contravening this Act or the Administration Act; or
 - (ii) has contravened the repealed Act; or
 - (iii) is likely or proposing to engage in conduct that would contravene this Act or the Administration Act.
- (2) The chief executive may suspend the registered employee's registration certificate, whether or not disciplinary proceedings have been started under this Act.
- (3) The certificate 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 the employee an information notice within 14 days after suspending the employee's registration.
- (5) The employee must return the certificate to the chief executive within 14 days after the employee receives the notice, unless the employee has a reasonable excuse.

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

205 Immediate cancellation

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

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

Division 11 General provisions about employee registration

206 Form of registration certificate

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

207 Term of registration certificate

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

208 Replacement certificates

- (1) A registered employee may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged registration certificate.
- (2) The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.
- (3) The chief executive must grant the application if the chief executive is satisfied the certificate has been lost, stolen or destroyed, or damaged in a way to require its replacement.

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- (4) If the chief executive grants the application, the chief executive must issue another certificate to the applicant to replace the lost, stolen, destroyed or damaged certificate.

209 Register of registration certificates

- (1) The chief executive must keep a register of registration certificates and applications for registration certificates (*registration certificate register*).
- (2) The registration certificate register may form part of the licence register.
- (3) The registration certificate register must contain the following particulars—
 - (a) for each applicant for a registration certificate—
 - (i) the applicant's name; and
 - (ii) the date of the application; and
 - (iii) the application number;
 - (b) for each registered employee—
 - (i) the employee's name; and
 - (ii) the dates of issue and expiry of the employee's current registration certificate; and
 - (iii) any conditions imposed on the certificate; and
 - (iv) the employee's registration certificate number; and
 - (v) particulars of any surrender, suspension, cancellation or revocation of the employee's registration certificate or any licence or certificate issued to the employee under this or the repealed Act.
- (4) A person may, on payment of any fee that may be prescribed under a regulation, inspect, or get a copy of details in, the part of the register containing the particulars mentioned in subsection (3)—

- (a) at the department's head office when it is open to the public; or
- (b) by using a computer.
- (5) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.
- (6) The register may be kept in any way the chief executive considers appropriate.
- (7) In this section—
contain includes record and store.

210 Registered employees to notify chief executive of changes in circumstances

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

Part 6 Trust accounts

211 Opening and maintaining trust accounts

- (1) A principal licensee must open and maintain a trust account or special trust account under the Administration Act if an amount is likely to be received by the licensee when performing the activities of a motor dealer or chattel auctioneer.
Maximum penalty—200 penalty units or 2 years imprisonment.

[s 212]

- (2) However, subsection (1) does not apply to a del credere agent for selling livestock under a del credere agreement while the agreement is in force.
- (3) In this section—
 - amount**—
 - (a) includes deposit and purchase monies for a transaction; but
 - (b) does not include an amount payable to the licensee in relation to a transaction in refund of an expense the licensee was authorised to incur and did incur and for which the licensee holds a receipt.

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

Part 7 Claims against the fund

Division 1 Preliminary

212 Definitions for pt 7

In this part—

claimant means a person who makes a claim against the fund.

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

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

relevant person means—

- (a) a licensee; or

- (b) a licensee's employee or agent, or a person carrying on business with the licensee; or
- (c) a person having charge or control, or apparent charge or control, of a licensee's registered office or business.

Division 2 Who can claim

213 Claims

- (1) A person may, in the way provided under the Administration Act, 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—
 - section 76 or 77
 - section 82(2)
 - section 89(4)
 - section 98
 - section 140 or 141
 - section 149(2)
 - section 211
 - section 236
 - section 237;
 - (b) a failure of a motor dealer to ensure a person who has bought 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 82 or 149;
 - (c) a failure of an auctioneer to ensure a person who has bought a motor vehicle sold by the auctioneer (other than a motor vehicle sold for another auctioneer or a motor dealer) gains clear title to the vehicle at the time

[s 214]

property in the vehicle passes to the buyer, whether or not the auctioneer contravenes section 149;

- (d) a stealing, misappropriation or misapplication by a relevant person of property entrusted to the person as agent for someone else 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.

214 Persons who can not claim

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 relevant person from the seller; and
 - (ii) the relevant person and the seller agree in writing that the relevant person guarantees payment to the seller of the livestock's purchase price;

Editor's note—

The practice described in subparagraph (ii) is commonly referred to as 'del credere'.

- (b) a relevant person who suffers financial loss in the course of performing an activity, or carrying on business, as a relevant person;
- (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 an activity, or carrying on business, under the person's licence;

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- (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 a motor dealer's obligations under a financial arrangement made by the motor dealer.

Part 8 Jurisdiction of QCAT

Division 1 Preliminary

215 Definitions for pt 8

In this part—

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

former registered employee means a person who was a registered employee, or the holder of a registration certificate under the repealed Act, at any time within 1 year before a proceeding under this part is started involving the person.

licensee includes a former licensee.

registered employee includes a former registered employee.

216 Jurisdiction

For this Act, QCAT has the following jurisdiction—

- (a) to hear and decide disciplinary matters involving licensees and registered employees;
- (b) to review decisions of the chief executive in relation to licensing and registration.

[s 217]

Division 2 Disciplinary proceedings

217 Grounds for starting disciplinary proceedings

- (1) The following are grounds for starting a disciplinary proceeding against a licensee or registered employee—
 - (a) the licensee or employee has been convicted of—
 - (i) an indictable offence; or
 - (ii) an offence against this Act or the Administration Act;
 - (b) the licensee or employee has contravened or breached—
 - (i) this Act, including a code of conduct; or
 - (ii) the Administration Act; or
 - (iii) an undertaking given under part 9, division 2; or
 - (iv) a corresponding law;
 - (c) the licensee or employee has been disqualified from holding a licence under a corresponding law;
 - (d) an amount has been paid from the fund because the licensee or employee did, or omitted to do, something that gave rise to a claim against the fund;
 - (e) the licensee or employee fraudulently or improperly obtained, or helped someone else to fraudulently or improperly obtain, a licence or registration certificate;
 - (f) the licensee or employee has failed to comply with an order made by a court, the former tribunal or QCAT;
 - (g) for a licensee—
 - (i) the licensee is not a suitable person to hold a licence; or
 - (ii) the licensee has carried on, or is carrying on, business under a licence with someone who is not a suitable person to hold a licence; or

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- (iii) the licensee has, in carrying on a business or performing an activity, been incompetent or acted in an unprofessional way; or
 - (iv) the licensee has failed to ensure that the licensee's employed licensees or registered 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 licensee's licence; or
 - (vi) the licensee is an executive officer of a corporation in relation to whom QCAT finds grounds exist to take disciplinary action under section 222; or
 - (vii) if the licensee is a corporation—
 - (A) an executive officer of the corporation is not a suitable person to be an executive officer of a corporation; or
 - (B) an executive officer of the corporation is disqualified under this Act from being an executive officer of a corporation;
 - (h) for a registered employee—
 - (i) the employee is not eligible to be employed as a registered employee; or
 - (ii) the employee has, in performing an activity of a licensee, been incompetent or acted in an unprofessional way.
- (2) The chief executive must not start a disciplinary proceeding against an executive officer under subsection (1)(g)(vi) if the chief executive is satisfied—
- (a) the act or omission relevant to the proceeding against the corporation was done or made without the officer's knowledge; and

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

218 Starting disciplinary proceedings

The chief executive may apply to QCAT to conduct a proceeding to decide whether grounds exist under section 217 for taking disciplinary action against a licensee or registered employee.

Division 3 Review proceedings

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

A person who is dissatisfied with a decision of the chief executive made under a provision specified in schedule 1 may apply to QCAT to have the decision reviewed (*application for review*).

220 Stay of operation of decisions

- (1) A decision of the chief executive, other than a decision made under section 55 or 204, being reviewed is stayed for the purpose of securing the effectiveness of the review.
- (2) However, the period of a stay does not extend past the time when QCAT decides the application.

221 QCAT may extend time

- (1) QCAT may extend the time within which to seek review of a decision of the chief executive if it is satisfied—
 - (a) the application is made within 42 days after the person receives notice of the decision to be reviewed; and
 - (b) it is appropriate to extend time having regard to—

-
- (i) the application generally; and
 - (ii) the justice of the matter generally.
- (2) No appeal lies against QCAT's decision under this section.

Division 4 Proceedings generally

Subdivision 1 QCAT's orders

222 Orders QCAT may make on disciplinary hearing

- (1) QCAT may make 1 or more of the following orders against a person in relation to whom QCAT finds grounds exist to take disciplinary action under this Act—
 - (a) an order reprimanding the person;
 - (b) an order that the person pay to the State, within the time stated in the order, a fine of not more than—
 - (i) for an individual—200 penalty units; or
 - (ii) for a corporation—1000 penalty units;
 - (c) an order that the person pay compensation (inclusive of any commission to which the person is not entitled) to someone else who has suffered loss or damage because of the act or omission that resulted in the finding;
 - (d) an order that the person's licence or registration certificate be suspended for the period stated in the order;
 - (e) an order—
 - (i) if the person is the holder of a licence or registration certificate at the time 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 at the time the order is

[s 223]

made—that the person be disqualified permanently, or for the period stated in the order, from holding a licence or registration certificate;

- (f) an order, 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;
 - (g) an order imposing conditions on, or amending or revoking the conditions of, the person’s licence or registration certificate;
 - (h) another order QCAT considers appropriate to ensure the person complies with this Act.
- (2) QCAT may not make an order under subsection (1)(d)(ii) disqualifying the person from holding a licence or registration certificate if QCAT is satisfied that a court has, in relation to the matter giving rise to the disciplinary proceeding—
- (a) been asked to make an order under section 253(2) disqualifying the person from holding a licence or registration certificate; and
 - (b) declined to do so.
- (3) The chief executive may recover a fine, ordered by QCAT to be paid by the person to the chief executive, as a debt owing to the chief executive in a court with jurisdiction to recover debts up to the amount of the fine.

223 Stopping contraventions

- (1) This section applies if QCAT is satisfied, on application by the chief executive, that a person is doing, or is about to do, something in contravention of this Act.
- (2) QCAT may, by order, prohibit the person who is doing, or is about to do, the thing (the *prohibited person*) from starting or continuing the thing.

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- (3) QCAT may make an order under this section on the chief executive's application made without notice to the prohibited person but, in that case, QCAT must allow the prohibited person a reasonable opportunity to show cause why the order should not be confirmed.
 - (4) QCAT, after considering the prohibited person's evidence and submissions, if any, and any further evidence or submissions of the chief executive, is not satisfied the order should continue in force, QCAT must rescind the order.
 - (5) A person must not contravene an order under this section.
Maximum penalty—540 penalty units.
 - (6) An order under this section has effect on the giving of a copy of the order to the prohibited person.

Subdivision 2 Chief executive's right of appeal

224 Appeal

- (1) The chief executive may appeal to the appeal tribunal against any decision of QCAT, but only on the ground of error of law.
- (2) In this section—

appeal tribunal means QCAT as constituted under the QCAT Act, section 166 for the purposes of an appeal.

Part 9 Injunctions and undertakings

Division 1 Injunctions

225 Injunctions

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

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226 Who may apply for injunction

The following persons may apply to the District Court for an injunction—

- (a) the chief executive;
- (b) a person aggrieved by the respondent's conduct.

227 Grounds for injunction

The District Court may grant an injunction if the court 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 the code of conduct; or
- (b) attempting to contravene this Act or the code of conduct; or
- (c) aiding, abetting, counselling or procuring a person to contravene this Act or the code of conduct; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act or the 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 the code of conduct; or
- (f) conspiring with others to contravene this Act or the code of conduct.

228 Court's powers for injunctions

(1) The power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

-
- (b) whether or not the person has previously engaged in conduct of that kind.
 - (2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—
 - (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and
 - (b) whether or not the person has previously failed to do the act or thing.
 - (3) An interim injunction may be granted under this part until the application is finally decided.
 - (4) The District Court may rescind or vary an injunction at any time.

229 Terms of injunction

- (1) The District Court may grant an injunction in the terms the court considers appropriate.
- (2) Without limiting the court's power under subsection (1), an injunction may be granted restraining a person from carrying on a business as a licensee (whether or not the person is licensed or the business is carried on as part of, or incidental to, the carrying on of another business)—
 - (a) for a stated period; or
 - (b) except on stated terms and conditions.
- (3) Also, the court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person's contravention of this Act or a code of conduct.

230 Undertakings as to costs

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

[s 231]

Division 2 Undertakings

231 **Chief executive may seek undertaking after contravention**

- (1) This section applies if the chief executive reasonably believes a person has contravened or been involved in a contravention of this Act or the code of conduct.
- (2) The chief executive may, by written notice given to the person—
 - (a) state the act or omission the chief executive believes is the contravention; and
 - (b) ask the person to give the chief executive a written undertaking that the person will not continue or repeat the act or omission.
- (3) 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 233.

232 **Undertaking about other matter**

Without limiting section 231, the chief executive may accept an undertaking given by a person for this section about anything for which the chief executive or an inspector has a function or power.

Example of type of undertaking for this section—
an undertaking to publish corrective advertising

233 Variation and withdrawal of undertakings

- (1) If the chief executive accepts the undertaking, it may be varied or withdrawn at any time by—
 - (a) the person who gave it, but only if the chief executive agrees to the variation or withdrawal; or
 - (b) the chief executive, if the chief executive believes, on reasonable grounds—
 - (i) that, before it was accepted, the person who gave it contravened this Act, or the repealed 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 believes, on reasonable grounds, it is no longer necessary.
- (3) If the chief executive varies or withdraws, or agrees to the variation or withdrawal of, the undertaking, the chief executive must give the person who gave it written notice of its variation or withdrawal.
- (4) The variation or withdrawal takes effect when written notice of the variation or withdrawal is received by the person.

234 Enforcement of undertakings

- (1) If the chief executive believes, on reasonable grounds, a person has contravened a term of an undertaking, the chief executive may apply to the 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

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- financial benefit obtained by the person from, and reasonably attributable to, the contravention;
- (c) an order directing the person to pay compensation to someone else who has suffered loss or damage because of the contravention;
 - (d) an order directing the person to give a security bond to the State for a stated period;
 - (e) another order the court considers appropriate.
- (3) The District Court may order the forfeiture to the State of all or part of a security bond given by a person under subsection (2)(d) if—
- (a) the chief executive applies to the court for the order; and
 - (b) the court is satisfied that the person contravened the undertaking during the period for which the bond was given.

235 Register of undertakings

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

**Part 10 General contraventions,
 evidentiary matters and legal
 proceedings**

Division 1 General contraventions

236 Wrongful conversion and false accounts

- (1) Subsection (2) applies if a licensee, in the performance of the activities of a licensee, receives an amount belonging to someone else.
- (2) The licensee must not—
 - (a) dishonestly convert the amount to the licensee’s own or someone else’s use; or
 - (b) dishonestly render an account of the amount knowing it to be false in a material particular.

Maximum penalty—1000 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 belonging to someone else to the licensee’s own use or someone else’s use without having to prove that the amount belonged to a particular person.
- (4) A licensee must not represent that the licensee has received an amount if the licensee knows the licensee did not receive the amount including, for example, by rendering an account of the amount.

Maximum penalty—540 penalty units.

- (5) In this section—

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

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237 False representations about property

- (1) A licensee or registered employee must not represent in any way to someone else anything that is false or misleading in relation to the sale or auction of property.

Maximum penalty—540 penalty units.

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

Note—

See, for example, the *Fair Trading Act 1989*, section 40 and the *Trade Practices Act 1974* (Cwlth), section 53.

- (7) In this section—
false or misleading, in relation to a representation, includes the wilful concealment of a material fact in the representation.

238 Chief executive’s power to ask for substantiation of representations made by licensees or registered employees

- (1) This section applies if the chief executive believes, on reasonable grounds, that a licensee or registered employee has

made a representation in contravention of section 237(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 comply with the notice by the stated day, unless the person has a reasonable excuse for the failure to comply.
- (4) The person must respond to the notice by the stated day, unless the person has a reasonable excuse for the failure to comply.

Maximum penalty—100 penalty units.

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

239 False representations about mileage

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

Maximum penalty—540 penalty units.

240 Tampering with odometers

- (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.

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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.

241 Offence to charge fee for providing documents etc.

- (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 activities.

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

- (2) Subsection (1) does not limit the *Legal Profession Act 2007*, section 24 or 25.

242 Offence to ask for, or receive, excess or improper remuneration

- (1) If an amount is prescribed under a regulation as the maximum amount allowed to a licensee for the performance of a licensee’s activities 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 subsection (1), 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) Subsection (1) does not prevent the licensee asking for or receiving an amount more than the maximum amount allowed under the regulation if the amount is for GST payable for a supply in relation to the transaction.

243 Offence to lend or borrow licence

- (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.

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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.

244 False or misleading statements

- (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—

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

245 False or misleading documents

- (1) A person must not, for this Act, give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) informs the official, to the best of the person's ability, how it is false or misleading; and
(b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

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- (3) A person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (4) In this section—

official means—

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

Division 2 Evidentiary matters

246 Evidence of tampering by a motor dealer or chattel auctioneer

- (1) Evidence that a motor vehicle's odometer reading when the vehicle was in the possession of a motor dealer or chattel auctioneer was less than its reading when the dealer or chattel auctioneer took possession of the vehicle is evidence that—
 - (a) the motor vehicle's odometer was tampered with; and
 - (b) the dealer or chattel auctioneer contravened section 240(1)(a).
- (2) 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 or chattel auctioneer's possession is evidence that the dealer or chattel auctioneer contravened section 240(1)(b).
- (3) In this section—

possession, of a motor vehicle, includes custody and control of the vehicle.

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247 Continuing false representation—tampered with odometer

- (1) This section applies, in any proceeding, if there is evidence (*relevant evidence*) that a person intentionally tampered with 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) if the relevant evidence relates to subsection (1)(a)—the vehicle had not travelled more than the distance shown on the odometer; or
 - (b) if the relevant evidence relates to subsection (1)(b)—the vehicle had travelled more than the distance shown on the odometer.

248 Evidentiary provisions

- (1) This section applies to a proceeding under this Act.
- (2) A signature purporting to be the signature of the chief executive is evidence of the signature it purports to be.
- (3) A certificate purporting to be signed the chief executive, a member of QCAT or the principal registrar under the QCAT Act stating any of the following matters is evidence of the matter—
 - (a) a stated document is—
 - (i) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or
 - (ii) a notice, or a copy of a notice, given under this Act; or

- (iii) a record, or a copy of a record, kept under this Act;
or
- (iv) a document, or a copy of a document, kept under this Act;
- (b) on a stated day, a stated person—
 - (i) was, or was not, the holder of a stated licence or registration certificate under this Act; or
 - (ii) was given a stated notice, order, requirement or direction under this Act.

249 Entries in licensee’s documents

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

Division 3 Proceedings

250 Proceedings for an offence

- (1) Subject to subsection (2), a proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* within the later of the following—
 - (a) 1 year after the offence is committed;
 - (b) 6 months after the commission of the offence comes to the complainant’s knowledge, but within 2 years after the commission of the offence.
- (2) A proceeding for an indictable offence may be taken, at the prosecution’s election—
 - (a) by way of summary proceedings under the *Justices Act 1886*; or
 - (b) on indictment.
- (3) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—

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- (a) for the summary conviction of the person; or
 - (b) for an examination of witnesses in relation to the charge.
- (4) If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.
- (5) If—
- (a) a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted on indictment; or
 - (b) the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment;
- the magistrate—
- (c) must not decide the charge as a summary offence; and
 - (d) must proceed by way of a committal proceeding.
- (6) If a magistrate acts under subsection (5)—
- (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
 - (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (5) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
 - (c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).
- (7) The maximum penalty that may be imposed on a summary conviction of an indictable offence is 200 penalty units or 1 year's imprisonment.
- (8) In this section—

indictable offence means an offence against this Act for which the maximum penalty of imprisonment is more than 2 years.

251 Responsibility for acts or omissions of representatives

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

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

representative means—

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

state of mind, of a person, includes—

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

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252 Executive officers must ensure corporation complies with Act

- (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 the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual or, if the penalty is expressed to be for this section, the expressed penalty.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.
- (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.
- (5) For subsection (4)(a), it is sufficient for the executive officer to prove that the act or omission that was the offence was done or made without the officer’s knowledge despite the officer having taken all reasonable steps to ensure the corporation complied with the provision.

253 Power of court

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

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- (2) The court may also order that a person convicted of an offence against this Act be disqualified from holding a licence or registration certificate under this Act for a stated period or permanently.
 - (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.

254 Allegations of false or misleading representations or statements etc.

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

Part 11 General

255 Public warning statements

- (1) The Minister or chief executive may make or issue a public statement identifying and giving warnings or information about any of the following—
 - (a) contraventions of a code of conduct that have resulted in disciplinary action and persons who commit the contraventions;
 - (b) business practices regulated under this Act that are unfair and persons who engage in the unfair practices;

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- (c) the commission of offences against this Act and persons who commit the offences.
- (2) The statement may identify particular contraventions, business practices, offences and persons.
- (3) The Minister or chief executive must not make or issue a statement under this section unless satisfied that it is in the public interest to do so.

256 Civil remedies not affected

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

257 Criminal Proceeds Confiscation Act 2002 not limited

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

258 Delegation—chief executive

- (1) The chief executive may delegate the chief executive's powers, other than power under section 255, to an appropriately qualified public service employee.
- (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

259 Approved forms

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

260 Review of Act

- (1) The Minister must ensure the operation of this Act is reviewed.
- (2) The review must start within 3 years after the commencement of this section.
- (3) The Minister must table in the Legislative Assembly a report on the outcome of the review as soon as practicable after the review is finished.

261 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made about the following—
 - (a) fees, including the refunding of fees payable under this Act;
 - (b) the amount of fees and rate of commission that may be charged for transactions by licensees;
 - (c) imposing a penalty for a contravention of a regulation of not more than 20 penalty units;
 - (d) the keeping or destruction of motor vehicle identifiers;
 - (e) the display at a motor dealer's registered office of the motor dealer's usual hours of business;
 - (f) 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;
 - (g) the financial or insurance protection requirements for del credere agents;
 - (h) imposing limits on out-of-pocket expenses incurred in the performance of activities under a licence;
 - (i) the keeping of records, including the form in which a record is kept;

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- (j) the keeping of receipts and evidence of expenditure;
- (k) the length of time a document required to be kept under this Act is to be kept.

Part 12 Transitional provisions

262 Definitions for pt 12

In this part—

commencement means commencement of this section.

existing licence means a motor dealer's licence issued under the repealed Act.

existing registration certificate means a registration certificate as a motor salesperson issued under the repealed Act.

transitioned licence see section 263(2).

transitioned registration certificate see section 264(2).

263 Existing licences

Note—

See also the *Property Agents Act 2010*, section 264(2)(a), (b) and (d)(ii). Under those provisions persons who held particular types of licence under the repealed Act are taken to hold chattel auctioneer licences.

- (1) This section applies to a person who, immediately before the commencement, held an existing licence.
- (2) The person, on the commencement, is taken to be the holder of a motor dealer licence (the *transitioned licence*).
- (3) If the existing licence was subject to a condition (the *current condition*), the transitioned licence is also taken to be subject to a condition in the same terms, so far as practicable, as the current condition.

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- (4) The transitioned licence expires on the day it would have expired under the repealed Act.
 - (5) The chief executive may deal with the transitioned licence as if it were a licence issued under this Act.

Example of dealing with a transitioned licence under this Act—

The chief executive amending the conditions of the transition licence under section 51.

264 Existing registration certificates

Note—

See also the *Property Agents Act 2010*, section 265(2)(a) and (c)(ii). Under those provisions persons who held particular types of registration certificates under the repealed Act are taken to hold registration certificates as a trainee chattel auctioneer.

- (1) This section applies to a person who, immediately before the commencement, held an existing registration certificate.
- (2) The person, on the commencement, is taken to be the holder of a registration certificate as a motor salesperson under this Act (the ***transitioned registration certificate***).
- (3) If the existing registration certificate was subject to a condition (the ***current condition***), the transitioned registration certificate is also taken to be subject to a condition in the same terms, so far as practicable, as the current condition.
- (4) A transitioned registration certificate expires on the day it would have expired under the repealed Act.
- (5) The chief executive may deal with a transitioned registration certificate as if it were a registration certificate issued under this Act.

Example of dealing with the transitioned registration certificate under this Act—

The chief executive amending the conditions of the transitioned registration certificate under section 201.

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265 Existing applications

- (1) This section applies to the following applications made under the repealed Act but not decided before the commencement—
 - (a) an application for the issue of an existing licence or existing registration certificate;
 - (b) an application for the renewal of an existing licence or existing registration certificate;
 - (c) an application for the restoration of an existing licence or existing registration certificate;
 - (d) an application about appointing a nominated person mentioned in section 64(3) or 65(4) of the repealed Act, as a licensee’s substitute licensee;
 - (e) an application about amending an existing licence or existing registration certificate.
- (2) The application must be decided under this Act and the provisions of this Act, relevant to the application, apply to the application.
- (3) However, 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.
- (4) If the application is about the issue, renewal or restoration of an existing licence, the application is taken to be about the issue, renewal or restoration of the transitioned licence for the existing licence.
- (5) If the application is about the issue, renewal or restoration of an existing registration certificate, the application is taken to be about the issue, renewal or restoration of the transitioned registration certificate for the existing certificate.
- (6) If an application is about the renewal or restoration of an existing licence, the transitioned licence for the existing licence under that section is taken to continue in force from the day the transitioned licence would, apart from this subsection, expire until the application for renewal or restoration is—

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- (a) decided under this Act; or
 - (b) withdrawn.
- (7) If an application is about the renewal or restoration of an existing registration certificate, the transitioned registration certificate for the existing certificate is taken to continue in force from the day the transitioned registration certificate would, apart from this subsection, expire until the application for renewal or restoration is—
- (a) decided under this Act; or
 - (b) withdrawn.

266 Restoration of expired existing licenses

- (1) This section applies if a person's existing licence expired within 3 months before the commencement.
- (2) The person may apply under this Act, section 42, for restoration of the existing licence, as if the existing licence were a motor dealer licence.

Note—

Section 42(2)(a) requires that an application for restoration be made within 3 months after the expiry.

- (3) To remove any doubt, it is declared that section 44 applies to the existing licence.

267 Restoration of expired registration certificates

- (1) This section applies if a person's existing registration certificate expired within 3 months before the commencement.
- (2) The person may apply under section 197 for restoration of the existing registration certificate, as if the existing registration certificate were a motor salesperson registration certificate.

Note—

Section 197(2)(a) requires that an application for restoration be made within 3 months after the expiry.

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- (3) To remove any doubt, it is declared that section 199 applies to the existing registration certificate.

268 Previous refusals of applications

- (1) This section applies to a person who made any of the following applications under the repealed Act and the application was refused before the commencement—
 - (a) an application for the issue of an existing licence or existing registration certificate;
 - (b) an application for the renewal of an existing licence or existing registration certificate;
 - (c) an application for the restoration of an existing licence or existing registration certificate.
- (2) The person may not make another application—
 - (a) for 3 months after the day the chief executive gave the person an information notice for the refusal; or
 - (b) if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed.
- (3) This section does not apply to a person if—
 - (a) the person is a corporation; and
 - (b) the person satisfies the chief executive that, because of a genuine sale—
 - (i) no person who was a shareholder of, or held a beneficial interest in, the corporation when the refused application was made is a shareholder of, or holds a beneficial interest in, the corporation; and
 - (ii) no person who was in a position to control or influence the affairs of the corporation when the refused application was made is in a position to control or influence the affairs of the corporation.

269 Deactivated existing licences

- (1) Subsection (2) applies to an existing licence that was deactivated under the repealed Act.
- (2) The licence continues to be deactivated under this Act and section 54 applies to the licence as if the licence were a motor dealer licence deactivated under this Act.
- (3) A request to deactivate an existing licence, made under the repealed Act and not decided before the commencement, must be decided under this Act and section 54 applies to the request.

270 Suspended existing licences and existing registration certificates

- (1) This section applies to an existing licence or existing registration certificate that was, immediately before the commencement, suspended under the repealed Act.
- (2) The existing licence or existing registration certificate continues to be suspended under this Act.
- (3) The provisions of this Act relating to the suspension of a licence apply to the existing licence as if the existing licence were a licence under this Act.
- (4) The provisions of this Act relating to the suspension of a registration certificate apply to the existing registration certificate as if the existing registration certificate were a registration certificate under this Act.

271 Existing appointments

- (1) An engagement or appointment or an agreement to act as a motor dealer under the repealed Act that is in force immediately before the commencement and complies with the repealed Act (an *existing appointment*), continues to be a valid appointment to act as a motor dealer under this Act according to its terms.

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- (2) Also, if the engagement, appointment or agreement is for a sole agency within the meaning of the repealed Act, the engagement, appointment or agreement ends on the earlier of the following days—
 - (a) the day it ends according to its terms;
 - (b) a day 60 days after the commencement.
- (3) Further, if the engagement, appointment or agreement is for an exclusive agency (as defined under this Act), the engagement, appointment or agreement ends on the earlier of the following days—
 - (a) the day it ends according to its terms;
 - (b) a day 60 days after the commencement of this subsection.
- (4) An appointment, under the repealed Act, by the chief executive of a nominated person mentioned in section 64(3) or 65(4) of the repealed Act, as an existing licensee's substitute licensee that is in force immediately before the commencement continues to be a valid appointment under this Act according to its terms.

Note—

See also the *Property Agents Act 2010*, section 273(2)(a), (b) and (d)(ii). Under those provisions particular existing appointments under the repealed Act are taken to be appointments to act as a chattel auctioneer.

272 Disciplinary action relating to pre-commencement conduct

- (1) If, before the commencement, a ground existed for starting disciplinary action against a person under the repealed Act, disciplinary action may be taken against the person on that ground under this Act as if the ground were a ground for starting disciplinary proceedings under this Act.
- (2) If, before the commencement, QCAT had started, but not finished, disciplinary action under the repealed Act, the action may be finished under the repealed Act as if that Act had not been repealed.

273 Continuation of reviews under the repealed Act

- (1) Subsection (2) applies if—
 - (a) a person applied to QCAT, under section 501 of the repealed Act, for a review of a decision of the chief executive; and
 - (b) the review had not been decided before the commencement.
- (2) QCAT may hear, or continue to hear, and decide the review under the repealed Act as if that Act had not been repealed.
- (3) Subsection (4) applies if—
 - (a) a person could have applied, under section 501 of the repealed Act, for a review of a decision of the chief executive; but
 - (b) the person had not applied before the commencement.
- (4) The person may apply for a review of the decision under the repealed Act as if that Act had not been repealed.

274 Injunctions relating to pre-commencement conduct

- (1) An injunction granted by the District Court under the repealed Act continues to be a valid injunction under this Act according to its terms.
- (2) The provisions of this Act relating to injunctions apply to an injunction continued under subsection (1).
- (3) In addition to section 227, the District Court may also grant an injunction if the court is satisfied that a person has, before the commencement, engaged in conduct that constituted—
 - (a) a contravention of the repealed Act or the repealed code of conduct; or
 - (b) an attempt to contravene the repealed Act or the repealed code of conduct; or
 - (c) aiding, abetting, counselling or procuring a person to contravene the repealed Act or the repealed code of conduct; or

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- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the repealed Act or the repealed code of conduct; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the repealed Act or the repealed code of conduct; or
- (f) conspiring with others to contravene the repealed Act or the repealed code of conduct.

Note—

See also the *Property Agents Act 2010*, section 277(2). Under section 277(2)(a) injunctions relating to particular types of licences held by persons under the repealed Act operate in relation to the chattel auctioneer licences held by the persons. Under section 277(2)(b) injunctions relating to particular types of registration certificates held by persons under the repealed Act operate in relation to the registration certificates as trainee chattel auctioneers held by the persons.

275 Undertakings relating to pre-commencement conduct

- (1) An undertaking given by a person to the chief executive under the repealed Act continues to be a valid undertaking under this Act according to its terms.
- (2) The provisions of this Act relating to undertakings apply to an undertaking continued under subsection (1).
- (3) Section 231 also applies if the chief executive reasonably believes a person has, before the commencement, contravened or been involved in a contravention of the repealed Act or repealed code of conduct.
- (4) If, before the commencement, the chief executive applied to the District Court for an order under section 571 of the repealed Act and the District Court has not decided the application, the application may be heard under the repealed Act as if that Act had not been repealed.
- (6) If the chief executive could have applied to the District Court for an order under section 571 of the repealed Act but had not applied before the commencement, the chief executive may

apply to the District Court for an order under that section under the repealed Act as if that Act had not been repealed.

Note—

See also the *Property Agents Act 2010*, section 278(2). Under section 278(2)(a) undertakings relating to particular types of licences held by persons under the repealed Act operate in relation to the chattel auctioneer licences held by the persons. Under section 278(2)(b) undertakings relating to particular types of registration certificates held by persons under the repealed Act operate in relation to the registration certificates as trainee chattel auctioneers held by the persons.

276 Proceedings for offences under the repealed Act

- (1) This section applies if a person is alleged to have committed an offence against any of the following provisions of the repealed Act before the commencement—
 - (a) chapter 2, part 9, 10 or 11;
 - (b) chapter 3, part 9, 10 or 11;
 - (c) chapter 4, part 2, 3 or 4;
 - (d) chapter 5, 6, 7, 8, 11 or 12;
 - (e) chapter 14, part 2;
 - (f) chapter 15;
 - (g) chapter 16, part 3;
 - (h) chapter 17, part 1 or 3.
- (2) Despite the Criminal Code, section 11, proceedings for the offence may be started or continued, and the court may hear and decide the proceedings, as if the repealed Act had not been repealed.

277 Existing infringement notice offences

- (1) This section applies if—
 - (a) an infringement notice offence under the *State Penalties Enforcement Act 1999* was committed by a person before the commencement; and

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- (b) no infringement notice under that Act had been served before the commencement on the person for the offence.
- (2) Despite the Criminal Code, section 11, an infringement notice may be served on the person and the infringement notice may be dealt with as if the repealed Act had not been repealed.

278 Existing inspectors and delegates

- (1) A person who held an appointment as an inspector under the repealed Act immediately before the commencement is taken to be appointed as an inspector for this Act.
- (2) If a person was delegated a power of the chief executive under section 597 of the repealed Act and the delegation was in force immediately before the commencement, the person is taken to have been delegated the power under this Act.

279 Existing registers

- (1) On the commencement—
 - (a) the licence register kept under the repealed Act is taken to be the licence register; and
 - (b) the registration certificate register kept under the repealed Act is taken to be the registration certificate register; and
 - (c) the register kept under section 572 of the repealed Act is taken to be the register of undertakings.
- (2) In this section—

register of undertakings means the register kept under section 235.

280 Existing fines and fees

- (1) A fine ordered to be paid by the tribunal to the chief executive under the repealed Act that has not been paid before the commence met may be recovered after the commencement as

a debt owing to the chief executive in a court with jurisdiction to recover debts up to the amount of the fine.

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

Schedule 1 Decisions subject to review

section 219

- section 21(2) (Chief executive must consider suitability of applicants and licensees)
- section 32(1) (Chief executive may issue or refuse to issue licence)
- section 35(1) (Licence—conditions)
- section 40(1) (Chief executive may renew or refuse to renew licence)
- section 43(1) (Chief executive may restore or refuse to restore licence)
- section 49(1) (Chief executive may appoint or refuse to appoint substitute licensee)
- section 51(1) (Amendment of licence conditions)
- section 55(2) (Immediate suspension)
- section 186(2) (Chief executive must consider suitability of applicants)
- section 192(1) (Chief executive may issue or refuse to issue registration certificate)
- section 193(1) (Registration certificate—conditions)
- section 195(1) (Chief executive may renew or refuse to renew registration certificate)
- section 198(1) (Chief executive may restore or refuse to restore registration certificate)
- section 201(1) (Amendment of registration certificate conditions)
- section 204(2) (Immediate suspension)

Schedule 2 Dictionary

section 8

actually expended, in relation to expenses, means the amount actually incurred after deducting—

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

Administration Act means the *Agents Financial Administration Act 2010*.

affected by bankruptcy action, in relation to an individual, means the individual—

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

Agents Act means—

- (a) the *Commercial Agents Act 2010*; or
- (b) the *Property Agents Act 2010*.

application for review see section 219.

approved form see section 259.

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

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associate, of a person, means—

- (a) a spouse, parent, brother, sister or child of the person; or
- (b) a child of the person's spouse.

audit period, see section 34 of the Administration Act.

audit report, see section 34 of the Administration Act.

beneficial interest, other than for section 32(6)(b)(i), see section 9.

business address, of a licensee, see 16(1)(b).

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

business day, for part 3, division 4—see section 83; and

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

- (a) for camping; or
- (b) as a dwelling; or
- (c) for carrying on any trade or business.

chattel auctioneer—

- (a) generally, see section 127(1); and
- (b) for part 4, division 4, see section 150.

chattel auctioneer licence means a chattel auctioneer licence 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.

claimant, for part 7, see section 212.

claim fund see section 42 of the Administration Act.

code of conduct means a code of conduct under section 79 or 146.

commencement see section 262.

commercial vehicle means a motor vehicle—

- (a) built mainly for carrying or hauling goods; or
- (b) designed to carry more than 9 persons;

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

comparable certificate means—

- (a) for a registration certificate as a motor salesperson—a registration certificate as a motor salesperson granted under the repealed Act; or
- (b) for a registration certificate as a trainee chattel auctioneer—a registration certificate as a trainee auctioneer granted under the repealed Act.

comparable licence means—

- (a) for a motor dealer licence—a motor dealer’s licence granted under the repealed Act; or
- (b) for a chattel auctioneer licence—an auctioneer’s licence granted under the repealed Act.

complaint, for part 7, see section 212.

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

consignment, for the sale of a motor vehicle, means the delivering of the motor vehicle by a person into the possession of a motor dealer or chattel auctioneer and the appointing of the motor dealer or chattel auctioneer as an agent to sell the vehicle for the vehicle’s owner.

conviction includes a plea of guilty or a finding of guilt by a court, but does not include a plea of guilty or a finding of guilt by a court if no conviction is recorded by the court.

cooling-off period, for part 3, division 4, see section 83.

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.

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criminal history, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than convictions for which the rehabilitation period has expired, and not been revived, under that Act.

Note—

Because of this definition, sections 6, 8, 9 and 10 of the *Criminal Law (Rehabilitation of Offenders) Act 1986* have no relevant operation for the purposes of a person's criminal history under this Act.

criminal history costs requirement see—

- (a) generally for an applicant or licensee—section 25(2); or
- (b) for an applicant for, or for the renewal or restoration of, registration—section 188(2).

defect—

- (a) for part 3, division 5, see section 99; or
- (b) for part 4, division 4, see section 150.

defect notice—

- (a) for part 3, division 5, see section 99; or
- (b) for part 4, division 4, see section 150.

del credere agent means a chattel auctioneer who—

- (a) is authorised under the auctioneer's chattel auctioneer 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 activities of a licensee as the employee of someone else.

employment register—

- (a) of a motor dealer, see section 117(1); or
- (b) of a chattel auctioneer, see section 171(1).

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.

existing licence see section 262.

existing registration certificate see section 262.

financial loss, for part 7, see section 212.

financier means a corporation whose ordinary business (whether or not it carries on any other business) is providing credit in relation to motor vehicles and that does not carry on the business of dealing with motor vehicles other than for 1 or more of the following purposes—

- (a) selling motor vehicles on instalment terms;
- (b) hiring motor vehicles under hire-purchase agreements;
- (c) putting in place or enforcing securities over motor vehicles;
- (d) hiring motor vehicles, if no right to purchase the motor vehicle is included in the hiring of any vehicle;
- (e) disposing of motor vehicles acquired by it in connection with a purpose mentioned in paragraphs (a) to (d).

former licensee—

- (a) generally, means a person who held a licence under this or the repealed Act; and
- (b) for part 8, see section 215.

former registered employee, for part 8, see section 215.

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

fund means the claim fund.

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

holder—

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

in charge see section 10.

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

inspector means a person appointed as an inspector under the *Fair Trading Inspectors Act 2010*.

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

licence register see section 61(1).

licensed, in relation to a person, means licensed under this Act.

licensee—

- (a) generally, means the holder of a motor dealer or chattel auctioneer licence; or
- (b) for part 8, see section 215.

livestock means cattle, horses, sheep or swine.

minor claim, against the fund, means a claim of not more than \$10000.

misleading includes deceptive.

motor dealer—

- (a) generally, see section 63(1); and
- (b) for part 3, division 5, see section 99.

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

motor salesperson means a person who holds a registration certificate as a motor salesperson.

motor vehicle see section 11.

non-refundable deposit, for part 3, division 4, see section 83.

obstruct includes hinder, delay and attempt to obstruct.

obtain—

- (a) for part 3, division 2, subdivision 4, see section 75; or
- (b) for part 4, division 2, subdivision 5, see section 139; and

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

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

registered employee—

- (a) generally, means a person registered under this Act as a motor salesperson or trainee chattel auctioneer; or
- (b) for part 8, see section 215.

registered office—

- (a) of a motor dealer, see section 114; or
- (b) of a chattel auctioneer, see section 168.

registration certificate means a registration certificate issued under section 192.

registration certificate register see section 209(1).

relevant person, for part 7, see section 212.

repair period—

- (a) for part 3, division 5, see section 99; or
- (b) for part 4, division 4, see section 150.

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

repealed code of conduct means the *Property Agents and Motor Dealers (Commercial Agency Practice Code of Conduct) Regulation 2001*.

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

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respondent—

- (a) for part 7, see section 212; and
- (b) for part 9, see section 225.

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

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

sell includes agree to sell, advertise or display for sale, attempt to sell, have for sale, negotiate for a sale, and in any way be concerned in selling.

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.

statutory warranty—

- (a) for part 3, division 5, see section 99; or
- (b) for part 4, division 4, see section 150.

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

time of taking possession see section 99.

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

trainee chattel auctioneer means a person who holds a registration certificate as a trainee chattel auctioneer.

transactions register see section 118.

transitioned licence see section 262.

transitioned registration certificate see section 262.

tribunal means QCAT.

trust account, means a trust account required to be kept under section 211.

used imported vehicle means a motor vehicle that—

- (a) has been imported into Australia under the *Motor Vehicle Standards Act 1989* (Cwlth); and
- (b) is intended to be used in transport in Australia within the meaning of that Act.

but does not include a motor vehicle that has been supplied to the market in full volume in Australia within the meaning of that Act and the *Motor Vehicle Standards Regulations 1989* (Cwlth).

used motor vehicle—

- (a) generally, means—
 - (i) a motor vehicle that has, at any time, been licensed or registered, whether under a law of the State or another State; or
 - (ii) a motor vehicle that, had it not been registered as mentioned in subparagraph (i) for use for demonstration or sales promotion, would have been a new motor vehicle; or
 - (iii) a used imported vehicle; and
- (b) for part 3, division 4, see section 83.

warrantor—

- (a) for part 3, division 5, see section 99; or
- (b) for part 4, division 4, see section 150.

warranty advice—

- (a) for part 3, division 5, see section 99; or

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(b) for part 4, division 4, see section 150.

warranty period—

(a) for part 3, division 5, see section 99; or

(b) for part 4, division 4, see section 150.

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

(a) a repairable write-off; or

(b) a statutory write-off.