



Consultation guide

Property Agents Bill 2010
Motor Dealers and Chattel Auctioneers Bill 2010
Commercial Agents Bill 2010
Agents Financial Administration Bill 2010

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Background and overview

Review of the *Property Agents and Motor Dealers Act 2000*

In 2008, the former Service Delivery and Performance Commission (SDPC) reviewed the *Property Agents and Motor Dealers Act 2000* (the PAMD Act).

The release of the Property Agents Bill 2010, the Motor Dealers and Chattel Auctioneers Bill 2010, the Commercial Agents Bill 2010 and the Agents Financial Administration Bill 2010 represents the implementation of the final stage of the reforms resulting from that review.

The PAMD Act provides for the licensing and regulation of real estate agents, resident letting agents (letting agents for community titles schemes), pastoral houses (sellers of rural-based livestock, chattels and property), property developers, motor dealers, auctioneers and commercial agents (predominantly debt collectors). The PAMD Act also establishes a claim fund for consumers who suffer financial loss as a result of the conduct of a licensee.

The aim of the SDPC review was to reduce the regulation compliance cost on business without compromising consumer protection. The SDPC review found that consumers, industry and Office of Fair Trading (OFT) officers find the PAMD Act difficult to navigate due to its breadth. The Government supported or partially supported 22 of the 48 recommendations in the review, including splitting the PAMD Act into occupation specific Acts, with requirements relating to the administration of trust accounts to sit in a separate Administration Act.

The Queensland Government has also committed to implementing the Council of Australian Governments' National Occupational Licensing System (NOLS) to property agents. While the exact nature of the licensing framework for property agents under the NOLS has not been finalised, the split of the PAMD Act into occupation specific Acts, including a separate Act for property agents will facilitate the eventual introduction of the NOLS in relation to property agents in Queensland.

Public consultation

The Department of Employment, Economic Development and Innovation (DEEDI) is seeking feedback on the three occupation specific draft Bills (the Property Agents Bill 2010, the Motor Dealers and Chattel Auctioneers Bill 2010, and the Commercial Agents Bill 2010) and the Agents Financial Administration Bill 2010. In particular, DEEDI would like feedback on how the regulation of specific occupations has been split among the three Bills, with provisions in relation to trust accounts and claim funds in the Agents Financial Administration Bill 2010.

These Bills do not represent a general review of the PAMD Act in relation to its substantive provisions. Licensing and conduct requirements will remain largely unchanged and will be replicated in the proposed new occupation specific Acts.

What will change is the regulatory framework, with property agents, motor dealers, chattel auctioneers and commercial agents regulated under separate Acts. There will be new licence categories applying to some licensees as a result of the proposed new framework, and the separation of occupation specific licensing and related conduct provisions into separate Bills. Special provisions have also been included to transition existing licensees and registered employees to the new licence categories.

The development of occupation specific Acts will enhance awareness of regulatory requirements for particular industries, which is likely to increase industry standards, simplify compliance and result in increased consumer confidence in the industries being regulated.

The new Bills will also implement the Government-supported SDPC recommendations to:

- cease to licence property developers
- transition existing pastoral house licensees (pastoral house directors and managers) to the licensing requirements applying to real estate agents
- transition existing pastoral house salespersons to meeting the requirements applying to real estate salespersons, and
- remove the requirement for companies to have a licensee as a director (provided the person in charge of the corporation's business is licensed).

Part A of this guide describes the proposed new legislative framework, incorporating the four draft Bills and focuses on:

- the new licensing framework
- the relationship of each Act to other Acts in the new licensing framework, and
- implementation of other key SDPC recommendations.

Part B of this guide describes the proposed transitional provisions under each of the occupation specific Bills for transitioning existing licensees to new licences and existing registered employees to new registration certificates.

Providing feedback

The Department of Employment, Economic Development and Innovation is now inviting feedback regarding the:

- Property Agents Bill 2010
- Motor Dealers and Chattel Auctioneers Bill 2010
- Commercial Agents Bill 2010, and
- Agents Financial Administration Bill 2020

Feedback can be submitted via mail, email or facsimile at:

Mail Fair Trading Policy
 Department of Employment, Economic Development and Innovation
 GPO Box 3111
 Brisbane Qld 4001

Email agentsbills@deedi.qld.gov.au

Facsimile 3405 4059

For more information, email agentsbills@deedi.qld.gov.au or call 3898 0176.

The closing date for submissions is 16 September 2010.

Glossary

Administration Act

The proposed new Agents Financial Administration Act.

Inspectors Powers Bill

A Bill the Government has agreed to develop that will harmonise inspectors' powers across all fair trading legislation, including the *Property Agents and Motor Dealers Act 2000*.

NOLS

The National Occupational Licensing System. On 3 July 2008, the Council of Australian Governments (COAG) agreed to develop a national trade licensing system (NLS) as part of its regulatory reform agenda. Property Agents regulated under the PAMD Act are one of the seven licences to be captured by the NLS. The Government has committed to applying a new National Occupational Licensing Law in Queensland by November 2010 and implementing the NLS for property agents by 1 July 2012.

Occupation specific Acts

The following proposed new Acts, representing the implementation of the SDPC recommendation to split the *Property Agents and Motor Dealers Act 2000* into separate Acts for separate industries

- Property Agents Act (to licence property agents and resident letting agents)
- Motor Dealers and Chattel Auctioneers Act (to licence motor dealers and auctioneers of chattels); and
- Commercial Agents Act (to licence the activities of commercial agents).

PAMD Act

The current *Property Agents and Motor Dealers Act 2000*.

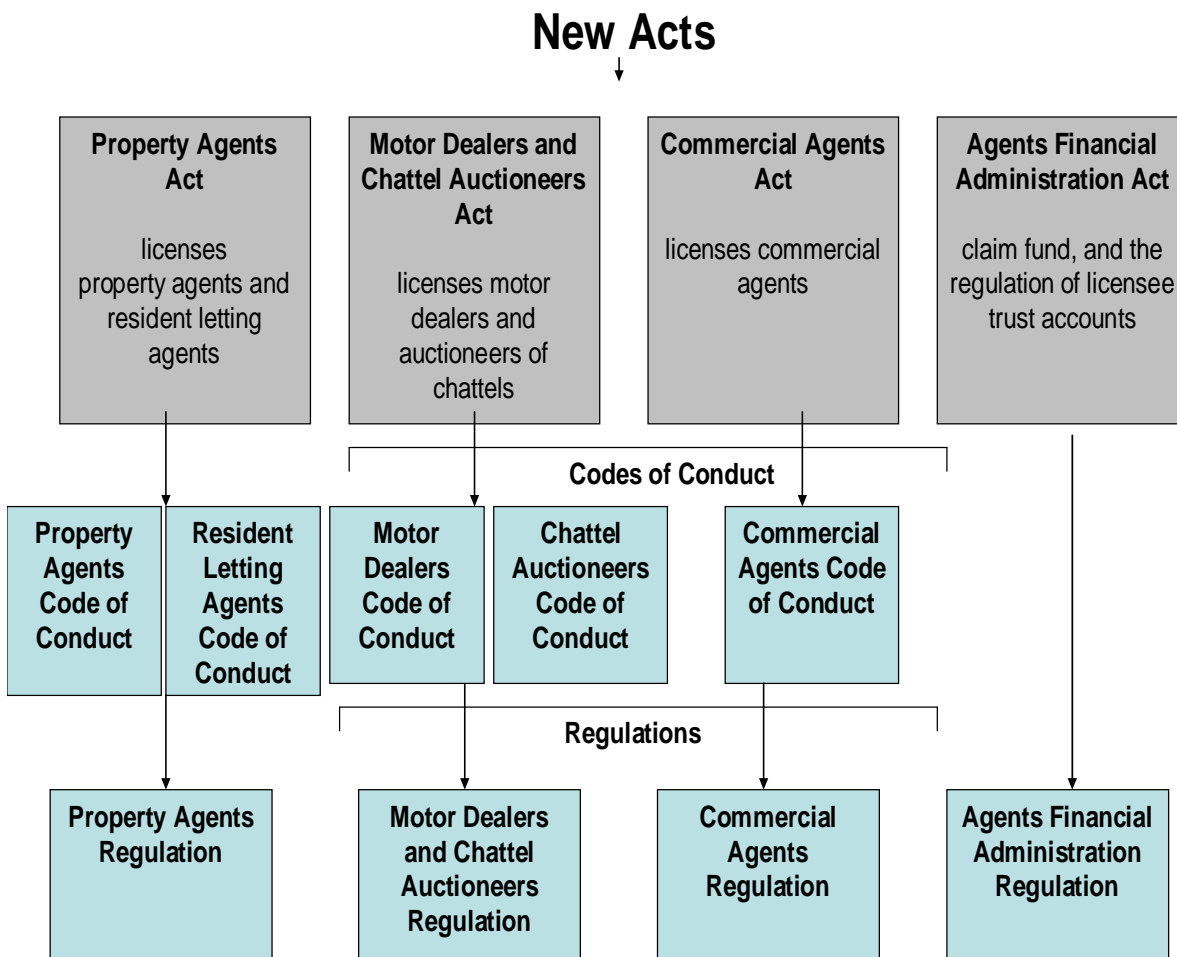
SDPC

The former Service Delivery and Performance Commission. The SDPC conducted a review of the *Property Agents and Motor Dealers Act 2000* in 2008, with the aim of reducing the regulation compliance cost on business without compromising consumer protection.

Part A: The new legislative framework

It is proposed that the PAMD Act be split into the following new Acts:

- Property Agents Act (to facilitate the implementation of the NOLS by providing for a property agent licence and a resident letting agent licence)
- Motor Dealers and Chattel Auctioneers Act (providing for a motor dealer licence and a chattel auctioneer licence)
- Commercial Agents Act (providing for a commercial agent licence)
- Agents Financial Administration Act (providing for the trust account requirements applying to agents, the establishment of the claim fund and procedures for deciding claims).



New licence categories

The following are the proposed new licence categories:

Bill	Licence categories	Registered employees categories
Property Agents Bill 2010	Property Agent (real estate agent and auctioneer) Property Agent (resident letting agent)	Property Agent Salesperson
Motor Dealers and Chattel Auctioneers Bill 2010	Motor Dealer Chattel Auctioneer	Motor Salesperson Trainee Chattel Auctioneer
Commercial Agents Bill 2010	Commercial Agent	Commercial Subagent

Property Agents Bill 2010

The Property Agents Bill 2010 provides for a property agent licence (to capture real estate agents, pastoral houses and auctioneers of real property) and a resident letting agent licence.

New licensing framework

Property agent licence

A person holding an unrestricted property agent licence will be authorised to perform the following activities as an agent for others for reward:

- a) buy, sell, exchange, or let places of residence or land or interests in places of residence or land
- b) buy, sell, exchange, or let businesses or interests in businesses
- c) sell, or attempt to sell, or offer for sale or resale something mentioned in paragraph (a) or (b) by way of auction
- d) negotiate for the buying, selling, exchanging, or letting of something mentioned in paragraph (a) or (b)
- e) collect rents.

Authorisation of the sale of property by auction

The property agent licence under the Property Agents Bill 2010 authorises licensees to sell real property, including by auction. The property agent licence will be modelled on the real estate agent licence under the PAMD Act and will replicate the conduct provisions currently applying to real estate agents. It will also replicate any additional conduct provisions applying exclusively to auctioneers under the PAMD Act.

Limited licences

In general, if a person is seeking to undertake only one of the authorised activities under the licence, he/she will still be required to obtain a full property agent licence. However, the Property Agents Bill 2010 contains a provision authorising the chief executive to issue a limited property agent licence. For example, this power will allow the continued licensing of people who only undertake business letting or the letting of residences under an affordable housing rental scheme. The regulation under the Property Agents Bill 2010 will prescribe the activities that may be performed under a limited property agent licence and the associated qualification requirements.

Property agent (resident letting agent) licence

The property agent (resident letting agent) licence will be a replication of the resident letting agent licence under the PAMD Act.

Property agent salesperson

The Property Agents Bill 2010 also provides for registration of employees of property agent licensees in the form of a property agent salesperson. A salesperson will have the authority to

undertake any activity that may be performed by the licensee who employs the salesperson, providing they act under a licensee's supervision, replicating what is currently provided under the PAMD Act.

Livestock sales, other than by auction

Under the PAMD Act, a person needs to be a real estate agent, pastoral house, pastoral house director or pastoral house manager to sell livestock, other than by auction. The sale of livestock by auction will continue to be regulated (under the chattel auctioneer licence in the proposed Motor Dealers and Chattel Auctioneers Act).

Summary of issues to consider

The authorised activities of real estate agents under the property agent licence will be expanded to include the auctioning of real property.

There is provision for certain limited licences—to be prescribed by regulation—under the Property Agents Bill 2010.

The sale of livestock other than by auction will be deregulated.

Property agent licensees, engaging in the auction of chattels, will also need to be licensed as a chattel auctioneer under the proposed Motor Dealers and Chattel Auctioneers Act.

Qualification requirements under the property agent licence

A person seeking to obtain a property agent licence will be required to obtain the qualifications attached to the real estate agent licence and the auctioneer licence under the PAMD Act. Currently, the real estate agent licence requires a licensee to obtain all but one of the qualifications under the auctioneer licence (i.e. the real estate agent licence does not include the *CPPDSM4004A Conduct auctions* qualification). A person will need to obtain all the prescribed qualifications to undertake any of the authorised activities under the property agent licence.

Currently, the cost of completing the qualification requirements for a real estate agent licence ranges from approximately \$1500 to \$3000 depending on the training provider.

Qualification requirements applying to new applicants wishing to undertake 'pastoral house' activities

The term 'pastoral house' refers to a particular type of licence granted under the PAMD Act. Pastoral houses provide real estate and auctioning services for people in rural areas of Queensland. They are authorised to undertake:

- activities of a real estate agent in relation to rural land and livestock only
- activities of an auctioneer only in relation to rural land, livestock and wool (plus the auctioning of no more than four lots of non-rural land by each office), and
- auctioning of plant, machinery, furniture and other items situated on rural land.

When the PAMD Act was enacted, pastoral house licensees were not subject to qualification requirements on the basis that access to the relevant qualification courses was limited by the rural location of licensees' activities. New licensees undertaking the activities of pastoral houses, including pastoral house directors, pastoral house managers and pastoral house auctioneers (as licensed property agents) will be subject to the qualification requirements currently applying to real estate agents and auctioneers. Existing pastoral house licensees will not be subject to these new educational requirements (see Part 5 for transitional arrangements for existing pastoral house licensees).

Summary of issues to consider

New licensees who wish to undertake the activities of current pastoral house licensees will need to obtain the qualifications currently applying to real estate agents and auctioneers.

Conduct requirements under the property agent licence

A property agent engaging in real estate or real property auctioning activities will be subject to the conduct requirements currently applying to both real estate agents and auctioneers. Under the PAMD Act, the conduct requirements applying to real estate agents and auctioneers of real property are largely the same, albeit in relation to different activities.

Conduct requirements applying to pastoral house licensees under the property agent licence

Under the proposed new Property Agents Act, licensees undertaking the activities of pastoral houses will be subject to some conduct requirements that do not currently apply to pastoral house licensees. These are outlined below.

New conduct requirements

Pastoral houses

Trust account requirements

Pastoral houses will no longer be exempt from trust account requirements for any of their activities. Currently pastoral houses are exempt from trust account requirements for all authorised activities other than the sale of rural land or the auction of land that is not rural land.

Additional claim fund liability

Pastoral houses will be subject to additional claim fund liability, as they will be subject to trust account requirements, where breaches can give rise to claims against the fund.

Pastoral houses, pastoral house directors, pastoral house managers – in relation to real estate activities

Disclosure requirements for sale of residential property

Licensees will be subject to a requirement to disclose to any prospective buyer of residential property:

- any relationship, and the nature of the relationship (whether personal or commercial), the agent has with anyone to whom the agent refers the buyer for professional services associated with the sale;
- whether the agent derives or expects to derive any benefit from a person to whom the agent has referred the buyer and, if so, the amount or value of the benefit;
- the amount, value or nature of any benefit any person has received, receives, or expects to receive in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property.

Requirement to provide notice about sale of resident letting agent's business

Licensees will be required to give a proposed buyer of a resident letting agent's business a written statement that includes various particulars.

Requirements about representations about the price of residential property - real estate agent obligations

A licensee can only give a potential seller of residential property information about the price at which the property should be offered for sale if the licensee gives the seller a copy of a comparative market analysis for the offered property or if a comparative market analysis can not be prepared, a written explanation showing how the real estate agent decided the market value of the property.

If residential property is to be offered for sale by auction, the licensee must not disclose to a potential buyer whether the seller has set a reserve price for the offered property or the reserve price or an amount the auctioneer considers is a price likely to result in a successful or acceptable bid for the offered property.

If the property is not to be offered for sale by auction and the seller has instructed the licensee not to disclose the price at which the seller is willing to sell the offered property, the licensee must not disclose to the potential buyer the price at which the seller is willing to sell the offered property.

Pastoral houses, pastoral house directors, pastoral house auctioneers – in relation to real property auctioning activities

Requirements about representations about the price of residential property for sales by auction – auctioneer obligations

A licensee is subject to disclosure requirements to the seller of residential property about the consequences of deciding to set or not set a reserve price.

The licensee must not help a seller decide the reserve price for offered property unless, before the seller decides the price, the licensee gives the seller a copy of a comparative market analysis for the offered property or if a comparative market analysis can not be prepared, a written explanation showing how the auctioneer decided the market value of the property.

A licensee must not disclose to a bidder whether the seller has set a reserve price for the offered property or the reserve price or an amount the licensee considers is a price likely to result in a successful or acceptable bid for the offered property.

Summary of issues to consider

Existing pastoral house licensees will have new conduct requirements in relation to the sale of real property.

Relationships to other Acts

The Property Agents Bill 2010 does not replicate most of the provisions in relation to:

- Trust account provisions - payments to and from trust accounts, obligations, disputes, audit requirements, freezing of trust accounts and appointing receivers and special investigators (Chapter 12)
- Claim fund provisions - establishment of claim fund, how the fund may be applied, agreements with financial institutions (Chapter 12)
- Jurisdiction of the tribunal in relation to claim fund matters (Chapter 13)
- Tribunal proceedings and orders - as relate to claim fund matters including provisions on extensions of time, reimbursement orders and when an order takes effect (Chapter 14)
- Injunctions and undertakings as relate to contraventions of the Administration Act (Chapter 16)
- General contraventions, evidentiary matters and legal proceedings as relate to contraventions and offences under the Administration Act (Chapter 17)

Trust accounts and claim fund provisions

It is proposed that the trust account and claim fund provisions in the PAMD Act applying across agent types be placed in a separate Act (the proposed Agents Financial Administration Act) to avoid duplication across each occupation-specific law.

The Property Agents Bill 2010 does set out the rights for a claim against the fund—that is, who can and cannot make a claim against the fund. However, how the fund can be applied and proceedings as they relate to claim fund matters will be included in the proposed Administration Act.

The proposed Property Agents Bill 2010 also includes the requirement for a principal licensee to open and maintain a trust account or special trust account in accordance with the proposed Administration Act if an amount (as defined in the Act) is likely to be received by the licensee when performing the activities of a property agent. However, the provisions for the maintenance of trust accounts, including payments to and from trust accounts, obligations, disputes, audit requirements, and general enforcement in relation to trust accounts including freezing of trust accounts and appointing receivers and special investigators will be in the proposed Administration Act.

Inspectors Powers

The Property Agents Bill 2010 does not replicate the enforcement provisions in Chapter 15 of the PAMD Act.

Government has agreed to review inspectors' powers across all fair trading legislation, including the PAMD Act, with a view to harmonisation in a stand-alone Act. Therefore, it is proposed that the

inspectors' powers provisions applying to the occupation specific Acts will sit in a proposed stand alone Inspectors Powers Act. The harmonisation of inspectors' powers is expected to be finalised in mid 2011 to coincide with the commencement of the occupation-specific laws.

Residential property sales

Part 6 of the Property Agents Bill 2010 replicates Chapter 11 of the PAMD Act, as it is proposed to be amended by the Property Agents and Motor Dealers and Other Legislation Amendment Bill 2010 (PAMDOLA Bill). The purpose of the current Chapter 11 provisions are to: (1) give a cooling-off period for persons entering into relevant contracts; (2) require all proposed relevant contracts and relevant contracts to include consumer protection information, including advice regarding the cooling-off period; and (3) enhance consumer protection by ensuring the independence of lawyers acting for buyers.

The PAMDOLA Bill will simplify the processes for the delivery and presentation of contracts for the sale of residential property, while still maintaining consumer protection provisions, and thereby promote greater certainty in residential property sales. The PAMDOLA Bill also makes miscellaneous amendments to the PAMD Act to reduce red tape for industry. The PAMDOLA Bill was introduced into the Legislative Assembly on 24 March 2010 and can currently be viewed at http://www.legislation.qld.gov.au/Bill_Pages/Bill_53_10.htm

Property developers

The proposed Property Agents Bill 2010 will implement the Government supported SDPC recommendation to remove the requirement for property developers and their employees to be licensed. Queensland is the only jurisdiction to license property developers.

While there will not be a licensing (or registered certificate) requirement, certain conduct provisions will continue to apply to property developers as per the current PAMD Act such as:

- The 'marketeer provisions' in Chapter 14 of the PAMD Act. These provisions apply to a person directly or indirectly involved in any way in the sale, promotion of the sale, or provision of a service in connection with the sale of residential property, and will continue to apply to a person described in the proposed Property Agents Bill 2010 as a property developer as well as to other unlicensed persons such as banks, valuers, lawyers, accountants and other marketing organisations.
- The Chapter 11 requirements in relation to the sale of residential property. This chapter provides for the presentation and delivery of all residential real estate contracts—other than by auction—regardless of whether the seller is licensed.
- The accounting requirements for 'relevant contracts' in Chapter 11 (Part 4). The requirements in current sections 371-373 of the PAMD Act provide important consumer protection for buyers where the relevant contract requires the buyer to make a part payment and the buyer is not yet entitled under the contract to receive a registrable instrument of transfer in exchange for the part payment. This requirement is retained in part 6 of the Property Agents Bill 2010.

- The requirement under current section 268 to disclose interests in property to buyers. This provision requires a property developer to disclose:
 - that the property developer holds an interest in the property
 - any relationship the property developer has with anyone the property developer refers the buyer to for professional services associated with the sale, and
 - whether the property developer derives or expects to derive any consideration or benefit from a person the property developer refers the buyer to, and, if so, the amount, value or nature of the consideration or benefit.

These requirements are retained for property developers (alongside disclosure requirements for lawyers in relation to proposed purchases of residential property) in part 6 of the Property Agents Bill 2010.

Other SDPC recommendations

The proposed Property Agents Bill 2010 also enables the implementation of the following SDPC recommendations:

- Recommendation A26—Remove the requirement for companies to have a licensee as a director provided that a person in charge of the corporation's business is licensed.
- Recommendation A32—Remove the requirement for a licence to be displayed in a licensee's registered office provided there is a requirement for a licensee to display the licence at the licensee's actual place of business.
- Recommendation A34—Remove the requirement for licensees to provide photographs with licence and registration certificate applications (except for commercial agents and commercial subagents).

Other amendments

The proposed Property Agents Bill 2010 aims to clarify an existing provision in relation to the register of undertakings. The existing PAMD Act requires the Chief Executive to keep a register of undertakings that can be searched by the public; however, it is not clear that this can be placed on DEEDI's website. To clarify this and to ensure there is easy public access to the register, it is proposed that the posting of the register on DEEDI's website be expressly provided for in the proposed Bills.

While it is currently an offence under section 573 of the PAMD Act for a licensee to render false accounts of trust monies, the offence does not capture the situation where the licensee falsely represents that he/she has actually received trust monies. It is proposed that the Bill clarifies this, by making this a separate offence.

Motor Dealers and Chattel Auctioneers Bill 2010

The proposed new Motor Dealers and Chattel Auctioneers Act will regulate the sale of used motor vehicles and the auction of chattels.

These two areas will be regulated under the same Bill due to a close nexus between the conduct requirements for the sale and auction of used motor vehicles. For example, there are currently specific conduct provisions that relate to the auction of livestock and used motor vehicles that will be replicated in the proposed new Motor Dealers and Chattel Auctioneers Act. More specifically, both motor dealers and chattel auctioneers who sell or auction used motor vehicles are required to ensure the buyer gains clear title to the motor vehicle and are subject to obligations for used motor vehicles covered by a statutory warranty.

New licensing framework

Motor dealer licence

The motor dealer licence will be a replication of the motor dealer licence under the PAMD Act.

A person holding a motor dealer licence under the Motor Dealers and Chattel Auctioneers Act will be subject to the same licensing and conduct requirements as a motor dealer under the PAMD Act.

Limited licences

The Motor Dealers and Chattel Auctioneers Bill 2010 contains a provision authorising the Chief Executive to issue a limited motor dealers licence. This power will allow for the continued licensing of people who only undertake wrecking or brokering in relation to used motor vehicles. Regulations under the Motor Dealers and Chattel Auctioneers Bill 2010 will prescribe the activities that may be performed under a limited motor dealer licence and the associated qualification requirements.

Chattel auctioneer licence

The chattel auctioneer licence will allow a licensee to auction chattels (e.g. motor vehicles, livestock, equipment, furniture, art, antiques) and will replicate the provisions applying to auctioneers under the PAMD Act that apply to the auction of chattels.

A person holding a chattel auctioneer licence under the proposed Motor Dealers and Chattel Auctioneers Act will be subject to the same licensing and conduct provisions that apply to an auctioneer undertaking the auctioning of chattels under the PAMD Act.

Summary of issues to consider

Auctioneers of chattels will continue to be licensed, but separately to property auctioneers. People who wish to auction both real property and chattels will require both a property agent and chattel auctioneer licence.

Motor salesperson and chattel auctioneer (representative)

The Motor Dealers and Chattel Auctioneers Bill 2010 also provides for registration of employees of licensees in the form of a motor salesperson and a trainee chattel auctioneer. A motor salesperson/trainee chattel auctioneer will have the authority to undertake any activity that may be performed by the licensee that employs the motor salesperson/trainee chattel auctioneer.

Conduct requirements applying to new pastoral house licensees in relation to the auction of chattels

Under the proposed new Motor Dealers and Chattel Auctioneers Act, licensees undertaking the activities of pastoral houses in relation to the auction of chattels will be subject to some conduct requirements that do not currently apply. These additional requirements are set out below.

Buyers' premiums in chattel auctions

A licensee will not be able to charge a buyer's premium to the buyer of a chattel unless the licensee obtains the written consent of the owner of the chattel and discloses prior to the auction, in the way prescribed by regulation, that a buyer's premium is payable.

Sale of livestock by auction

Where a licensee is conducting the sale of livestock by auction, the licensee may pay over the proceeds from the sale to their client only if the licensee:

- has known the client for at least 1 year; and
- in the licensee's opinion, the client is a person of good repute; and
- has no reason to believe the client is not lawfully entitled to sell the livestock;
- or the licensee receives a certificate for the client from a referee.

Sale of water damaged motor vehicles by auction

A licensee must announce immediately before the auction of a water damaged motor vehicle, that the vehicle is a water damaged motor vehicle.

Sale of written off motor vehicles by auction

A licensee must announce, immediately before the auction of an unregistered written-off motor vehicle, that the vehicle is a written-off vehicle and state the legal requirements in relation to repairable and statutory write-offs.

Guarantee of title for motor vehicles sold by auction

A licensee must ensure the buyer of a motor vehicle sold at auction gains clear title to the motor vehicle at the time property in the vehicle passes to the buyer.

Statutory warranty for vehicles sold by auction

For certain used motor vehicles, a licensee must give a statutory warranty to customers. Where a used motor vehicle does not have a statutory warranty, the licensee must comply with requirements to inform potential buyers that the vehicle does not have a statutory warranty.

Summary of issues to consider

Existing pastoral house licensees will have new conduct requirements to comply with in relation to the auctioning of chattels.

Relationship to other Acts

The Motor Dealers and Chattel Auctioneers Bill 2010 does not replicate most of the provisions in relation to:

- Trust accounts—payments to and from trust accounts, obligations, disputes, audit requirements, freezing of trust accounts and appointing receivers and special investigators (Chapter 12)
- Claim fund—establishment of a claim fund, how the fund may be applied, agreements with financial institutions (Chapter 12)
- Jurisdiction of the tribunal in relation to claim fund matters (Chapter 13)
- Tribunal proceedings and orders relating to claim fund matters, including provisions on extensions of time, reimbursement orders and when an order takes effect (Chapter 14)
- Injunctions and undertakings as relating to contraventions of the Administration Act (Chapter 16)
- General contraventions, evidentiary matters and legal proceedings relating to contraventions and offences under the Administration Act (Chapter 17)

Trust Accounts and Claim Fund

It is proposed that the trust account and claim fund provisions in the PAMD Act applying across agent types be placed in a separate Act (the proposed Agents Financial Administration Act) to avoid duplication across each occupation-specific law.

The Motor Dealers and Chattel Auctioneers Bill 2010 does provide the rights for a claim against the fund (that is, who can and cannot make a claim against the fund). However, the establishment of the fund, how the fund can be applied and proceedings as they relate to claim fund matters will be in the proposed Administration Act.

The Motor Dealers and Chattel Auctioneers Bill 2010 also includes the requirement for a principal licensee to open and maintain a trust account or special trust account in accordance with the Administration Act if an amount (as defined in the Act) is likely to be received by the licensee when performing the activities of a motor dealer or chattel auctioneer. However, the provisions for the maintenance of trust accounts, including payments to and from trust accounts, obligations, disputes, audit requirements, and general enforcement in relation to trust accounts, such as freezing trust accounts and appointing receivers and special investigators are included in the proposed Administration Act.

Inspectors Powers

The Motor Dealers and Chattel Auctioneers Bill 2010 does not replicate the enforcement provisions in Chapter 15 of the PAMD Act.

Government has agreed to review inspectors' powers across all fair trading legislation, including the PAMD Act, with a view to harmonisation in a stand-alone Act. Therefore it is proposed that the inspectors' powers provisions applying to the occupation specific Acts will sit in a proposed stand alone Inspectors Powers Act. The harmonisation of inspectors' powers is expected to be finalised in mid 2011 to coincide with the commencement of the occupation-specific laws.

Other SDPC recommendations

The Motor Dealers and Chattel Auctioneers Bill 2010 also enables the implementation of the following SDPC recommendations:

- Recommendation A26: Remove the requirement for companies to have a licensee as a director, provided that a person in charge of the corporation's business is licensed;
- Recommendation A32: Remove the requirement for a licence to be displayed in a licensee's registered office, provided there is a requirement for a licensee to display the licence at the licensee's actual place of business; and
- Recommendation A34: Remove the requirement for licensees to provide photographs with licence and registration certificate applications, except for commercial agents and commercial subagents.

Other amendments

The proposed Motor Dealers and Chattel Auctioneers Bill 2010 aims to clarify an existing provision in relation to the register of undertakings. While the PAMD Act requires the Chief Executive to keep a register of undertakings that can be searched by the public, it is not clear that this can be placed on the department's website. To clarify this and to ensure there is easy public access to the register, it is proposed that the posting of the register on DEEDI's website be expressly provided for in the proposed Bills.

While it is currently an offence under section 573 of the PAMD Act for a licensee to render false accounts of trust monies, the offence does not capture the situation where the licensee falsely represents that he/she has actually received trust monies. It is proposed that the Bill clarifies this, by making this a separate offence.

Commercial Agents Bill 2010

The proposed new Commercial Agents Act will licence and regulate commercial agents.

New licence

Commercial agent licence

The commercial agent licence will be a replication of the commercial agent licence under the PAMD Act.

A person holding a commercial agent licence under the proposed Commercial Agents Act will be subject to the same licensing and conduct requirements as a commercial agent under the PAMD Act.

Commercial subagent

The Commercial Agents Bill 2010 will also provide for registration of employees of licensees in the form of a commercial subagent. A commercial subagent will have the authority to undertake any activity that may be performed by the licensee who employs the subagent.

Relationship to other Acts

The Commercial Agents Bill 2010 does not replicate most of the provisions in relation to:

- Trust account provisions—payments to and from trust accounts, obligations, disputes, audit requirements, freezing of trust accounts and appointing receivers and special investigators (Chapter 12)
- Claim fund provisions—establishment of claim fund, how the fund may be applied, agreements with financial institutions (Chapter 12)
- Jurisdiction of the tribunal in relation to claim fund matters (Chapter 13)
- Tribunal proceedings and orders relating to claim fund matters including provisions on extensions of time, reimbursement orders and when an order takes effect (Chapter 14)
- Injunctions and undertakings relating to contraventions of the Administration Act (Chapter 16)
- General contraventions, evidentiary matters and legal proceedings relating to contraventions and offences under the Administration Act (Chapter 17)

Trust Accounts and Claim Fund

It is proposed that the trust account and claim fund provisions in the PAMD Act applying across agent types be placed in a separate Act (the proposed Agents Financial Administration Act) to avoid duplication across each occupation-specific law.

The Commercial Agents Bill 2010 does provide the rights for a claim against the fund (that is, for who and who cannot make a claim against the fund). However the establishment of the fund, how

the fund can be applied and proceedings as they relate to claim fund matters will be in the proposed Administration Act.

The Commercial Agents Bill 2010 also includes the requirement for a principal licensee to open and maintain a trust account or special trust account in accordance with the Administration Act if an amount (as defined in the Act) is likely to be received by the licensee when performing the activities of a commercial agent. However, the provisions for the maintenance of trust accounts, including payments to and from trust accounts, obligations, disputes, audit requirements, and general enforcement in relation to trust accounts including freezing of trust accounts and appointing receivers and special investigators will be in the proposed Administration Act.

Inspectors Powers

The Commercial Agents Bill 2010 does not replicate the enforcement provisions in Chapter 15 of the PAMD Act.

Government has agreed to review inspectors' powers across all fair trading legislation, including the PAMD Act, with a view to harmonisation in a stand-alone Act. Therefore it is proposed that the inspectors' powers provisions applying to the occupation specific Acts will sit in a proposed stand alone Inspectors Powers Act. The harmonisation of inspectors' powers is expected to be finalised in mid 2011 to coincide with the commencement of the occupation-specific laws.

Other SDPC recommendations

The Commercial Agents Bill 2010 also reflects the implementation of the following Government supported SDPC recommendations:

- Recommendation A26: Remove the requirement for companies to have a licensee as a director provided that a person in charge of the corporation's business is licensed;
- Recommendation A32: Remove the requirement for a licence to be displayed in a licensee's registered office provided there is a requirement for a licensee to display the licence at the licensee's actual place of business; and
- Recommendation A34: Remove the requirement for licensees to provide photographs with licence and registration certificate applications (except for commercial agents and commercial subagents).

Other amendments

The proposed Commercial Agents Bill 2010 aims to clarify an existing provision in relation to the register of undertakings. While the PAMD Act requires the Chief Executive to keep a register of undertakings that can be searched by the public, it is not clear that this can be placed on the department's website. To clarify this and ensure there is easy public access to the register, it is proposed that the posting of the register on DEEDI's website be expressly provided for in the proposed Bills.

While it is currently an offence under section 573 of the PAMD Act for a licensee to render false accounts of trust monies, the offence does not capture the situation where the licensee falsely represents that he/she has actually received trust monies. It is proposed that the Bill clarifies this, by making this a separate offence.

Agents Financial Administration Bill 2010

The proposed Agents Financial Administration Bill 2010 replicates the current PAMD Act provisions on administration of trust accounts and the claim fund.

On the whole, the provisions relating to the operation of trust accounts and trust account obligations are fully replicated in this Bill, including provisions on opening trust accounts, dealing with trust money, payments to and from trust accounts, disputes about trust money, audit requirements, freezing of trust accounts and appointing receivers and special investigators.

The Bill also includes provisions relating to establishing the claim fund, how the fund may be applied (i.e. it must be applied to pay claims against the fund and may be applied to pay costs and remuneration for receivers and special investigators appointed under the Act) and agreements between the Chief Executive to enter agreements with financial institutions to provide for the payment of interest to the consolidated fund on amounts held in licensees' general trust accounts.

The relationship to other Acts

The proposed Administration Act will provide how a claim against the fund is made. However, the occupation specific Acts will specify the grounds for making a claim against the fund and who can and cannot make a claim against the fund.

The occupation specific Acts will outline when a licensee is subject to the trust account requirements in the Administration Act. That is, the occupation specific Acts will provide that a principal licensee is required to open and maintain a trust account or a special trust account in the way provided in the Administration Act if the principal licensee is likely to receive an amount when performing activities under the licence.

The Agents Financial Administration Bill 2010 does not replicate the enforcement provisions in Chapter 15 of the PAMD Act.

Government has agreed to review inspectors' powers across all fair trading legislation, including the PAMD Act, with a view to harmonisation in a stand-alone Act. Therefore it is proposed that the inspectors' powers provisions applying to the occupation specific Acts will sit in a proposed stand alone Inspectors Powers Act. While section 558(1)(a) does relate to the powers of inspectors, it is specific to the trust requirements in the PAMD Act. As such, section 558 will be provided for in the Bill and not in the proposed Inspectors' Powers Act. The harmonisation of inspectors' powers is expected to be finalised in mid 2011 to coincide with the commencement of the occupation-specific laws.

SDPC amendments

In line with an SDPC recommendation there will be amendments made in the Property Agents and Motor Dealers and Other Legislation Amendment Bill 2010 (PAMDOLA Bill) to the notification requirements relating to the opening of a trust account. The SDPC recommended that licensees no longer be required to notify the department of their intention to open a trust account and only be required to provide notification of the establishment of a trust account and on its closure.

The PAMDOLA Bill 2010 was introduced into the Legislative Assembly on 24 March 2010 and can currently be viewed at http://www.legislation.qld.gov.au/Bill_Pages/Bill_53_10.htm

Other amendments

The Agents Financial Administration Bill 2010 includes new provisions to amend penalties for trust account offences to allow infringement notices to be issued for minor offences. It is proposed to reduce the maximum imprisonment term for particular offences relating to trust account requirements from three years to two years to enable infringement notices to be issued. Several trust account requirements address relatively minor breaches, such as late banking and early drawing of commission. Currently breaches of these requirements attract a maximum penalty of three years imprisonment. Consequently, they are indictable offences and an infringement notice cannot be issued. Allowing for the issue of an infringement notice for these relatively minor offences is an efficient and appropriate means of enforcement.

Part B: Transitional provisions for existing licensees and registered employees

The following section outlines the transitional arrangements under each of the occupation specific Bills for transitioning existing licensees and registered employees.

Property Agents Bill 2010

Licensees		
	Licence under PAMD Act (existing licence)	Licence under Property Agents Act
1	Real estate agent	Property agent – a licence permits both sale and auction of real property
2	Pastoral house	
3	Pastoral house director	
4	Pastoral house manager	
5	Pastoral house auctioneer	
6	Auctioneer (General)	
7	Resident letting agent	Property agent (resident letting agent)
8	Property developer	nil (deregulated)
9	Property developer director	nil (deregulated)

Registered Employees		
	Registered employees under PAMD Act (existing certificate of registration)	Registered employees (or licensees) under Property Agents Act
1	Real estate salesperson	Property agency salesperson
2	Pastoral house salesperson	
3	Trainee auctioneer	
4	Property developer salesperson	nil (deregulated)

Summary of approach – transitioning licensees

- Existing licensees with conditions on the activities they can perform will be transitioned to the appropriate licence with those same conditions.
- Existing **pastoral houses** and **pastoral house directors** will transition to an unconditional property agent licence and a chattel auctioneers licence.
- Existing **real estate agents** and **pastoral house managers** will transition to a property agent licence, on the condition that authorised activities under the licence are limited to the sale (not

auction) of real property. These licensees will need to obtain an additional auctioneering qualification (i.e. CPPDSM4004A Conduct auctions) if they want an unconditional property agent licence.

- Existing **real estate agents** and **pastoral house managers**, who also hold an **auctioneers licence**, will transition to an unconditional property agent licence and a chattel auctioneers licence under the proposed Motor Dealers and Chattel Auctioneers Act.
- Existing **pastoral house auctioneers** and **auctioneers** will transition to a property agent licence, on the condition that authorised activities under the licence are limited to the auctioning of real property and a chattel auctioneers licence under the proposed Motor Dealers and Chattel Auctioneers Act.
- Existing **pastoral house auctioneers** and **auctioneers**, that also hold a **real estate agents** licence, will transition to an unconditional property agent licence, and a chattel auctioneers licence under the proposed Motor Dealers and Chattel Auctioneers Act.
- Existing **resident letting agents** will transition to a property agent (resident letting agent) licence under the proposed Property Agents Act. The licence will have the same licensing and conduct provisions as those currently applying to resident letting agents under the PAMD Act.

Summary of approach – transitioning existing registered employees

- Existing **real estate agent salespersons** and **pastoral house salespersons** will be transitioned to being property agent salespersons, on the condition that authorised activities under the registration be limited to the sale (not auction) of real property under the supervision of a licensee.
- Existing **real estate agent salespersons** and **pastoral house salespersons**, who are also **trainee auctioneers** will be transitioned to being an unconditional property agent salesperson, and a trainee chattel auctioneer.
- Existing **trainee auctioneers** will transition to being a property agent salesperson on the condition that authorised activities under the registration be limited to the auction of real property under the supervision of a licensee and a trainee chattel auctioneer.
- Existing **trainee auctioneers** who are also **real estate agent salespersons** will transition to being a property agent salesperson and a trainee chattel auctioneer.
- Existing **property developer salespersons** will have the opportunity to transition to being property agent salespersons, on the condition that authorised activities under the registration be limited to the sale (not auction) of real property under the supervision of a licensee.

Summary of issues to consider

Existing real estate agents will be required to obtain additional qualifications before they can undertake the auction of real property.

It is proposed that an option be provided to existing property developer salespersons to transition to being property agent salespersons upon request.

Existing pastoral house auctioneers and auctioneers, will transition to both a property agent (restricted to auctioning) and a chattel auctioneers licence.

Transitional arrangements for pastoral house licensees

Existing pastoral house licensees (pastoral houses, pastoral house directors, pastoral house managers and pastoral house auctioneers (who auction real property)) will be transitioned to a property agent licence (with restrictions as outlined above) without being required to obtain additional qualifications.

Authorised activities of pastoral house licensees under property agent licence

After the split of the PAMD Act, pastoral houses will have expanded authorised activities (currently pastoral houses are limited to auctioning four non-rural properties a year per place of business and are limited to real estate and auctioning activities in the rural sector). The following table sets out the current authorised activities of pastoral house licensees and the authorised activities of these licensees after the split of the PAMD Act.

Licensee	Current authorised activities	Authorised activities after split of the PAMD Act	Other comments
Pastoral houses	<p>Selling (including by auction) rural land and livestock</p> <p>Auctioning wool plant, machinery, furniture and other items situated on rural land and conduct not more than four auctions each year of land, that is not rural land, for each place of business of the pastoral house in each year</p>	<p>Selling any real property and auction any real property and chattels</p>	<p>Will hold an unrestricted property agent licence</p> <p>Will be required to obtain a chattel auctioneer licence to auction chattels</p>

Licensee	Current authorised activities	Authorised activities after split of the PAMD Act	Other comments
Pastoral house directors	Acting for a pastoral house in selling (not by auction) rural land and livestock	Selling any real property and auction any real property and chattels	Will hold an unrestricted property agent licence Will be required to obtain a chattel auctioneer licence to auction chattels
Pastoral house managers	Acting for a pastoral house in selling (not by auction) rural land and livestock	Selling any real property (not by auction)	Will hold a property agent licence conditional on activities being limited to the sale (not auction) of real property
Pastoral house auctioneers	Auctioning rural land, livestock and wool plant, machinery, furniture and other items situated on rural land and conduct not more than 4 auctions each year of and, that is not rural land, for each place of business of the pastoral house in each year	Auctioning any real property and chattels	Will hold a property agent licence with activities limited to the sale of real property by auction Will be required to obtain a chattel auctioneer licence to auction chattels

Summary of issues to consider

Existing pastoral house licensees transitioned to property agents will be authorised to service both rural and non-rural markets.

Existing pastoral house managers will be transitioned to a property agent licence but have activities restricted to the sale of real property other than by auction.

Existing pastoral house auctioneers will be transitioned to a property agents licence but have activities restricted to the sale of real property by auction.

The requirement for existing pastoral house licensees (pastoral house directors, pastoral house managers and pastoral house auctioneers) to act for a pastoral house will be removed, so that licensees when transitioned to property agents may pursue work outside of a pastoral house corporation.

Motor Dealers and Chattel Auctioneers Bill 2010

Licensees		
	Licence under PAMD Act (existing licence)	Licence under Motor Dealers and Chattel Auctioneers Act
1	Motor dealer	Motor dealer
2	Auctioneer (General)	Chattel auctioneer A licence permits the sale by auction of chattels e.g. motor vehicles, livestock, equipment, furniture, art, antiques, etc

Registered employees		
	Registered employees under PAMD Act (existing registered certificate)	Registered employees under Motor Dealers and Chattel Auctioneers Act
1	Motor salesperson	Motor salesperson
2	Trainee auctioneer	Trainee Chattel auctioneer

Summary of approach – transitioning licensees

- Existing **motor dealers** will transition to a motor dealer licence, with licensees subject to the same licensing and conduct requirements as under the PAMD Act.
- As discussed above, existing **auctioneers** will transition to a property agent licence under the Property Agents Act, on the condition that authorised activities under the licence are limited to the auctioning of real property and a chattel auctioneer licence under the proposed Motor Dealers and Chattel Auctioneers Act.

Summary of approach – transitioning registered employees

- Existing **motor salespersons** will transition to being motor salespersons.
- As discussed above, existing **trainee auctioneers** will transition to being property agent salespersons (restricted to auction) and a trainee chattel auctioneer.

Summary of issues to consider

Current auctioneers will be transitioned to both a property agent licence (with appropriate restrictions) and a chattel auctioneer licence.

Commercial Agents Bill 2010

Licensees		
Registered employees		
	Registered employees under PAMD Act (existing registered certificate)	Registered employees under Commercial Agents Act
1	Commercial subagent	Commercial subagent

Summary of approach

- Existing **commercial agents** will transition to holding a commercial agent licence, with licensees subject to the same licensing and conduct requirements as under the PAMD Act.
- Existing **commercial subagents** will transition to being commercial subagents.