



Queensland

Commercial Agents Bill 2010

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2010

A Bill

for

An Act to comprehensively provide for the regulation of the activities, licensing and conduct of commercial agents and their employees, to protect consumers against particular undesirable practices

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Commercial Agents 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—public officials

- (1) Section 71 does not apply to—
 - (a) a bailiff serving a notice, claim, application, summons or other process; or
 - (b) a person, other than a commercial agent, who is an enforcement officer or a member of the staff of the State Penalties Enforcement Registry under the *State Penalties Enforcement Act 1999*—
 - (i) collecting, or requesting payment of, debts; or

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- (ii) serving a notice, claim, application, summons or other process.

- (2) In this section—

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

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 to perform an activity under a licence under this Act.

- (2) The person is exempt from the following provisions while performing the activity in relation to the business carried on under the licence in accordance with any conditions applying to the licence—

- section 56
- part 3, division 2, subdivision 1
- section 60
- part 3, division 3.

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

[s 7]

- (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 commercial agents, and for registering and regulating persons as commercial subagents, 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 commercial agents 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
 - (ii) responsibility for reviewing particular decisions of the chief executive rests with QCAT; and
 - (iii) responsibility for disciplinary matters rests with QCAT; and
- (e) increasing flexibility in enforcement measures through codes of conduct, injunctions and undertakings.

Division 3 Interpretation

8 Definitions

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

9 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.

Part 2 Licensing

Division 1 How to obtain a licence

10 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 12 and, if the person intends carrying on business under the licence, section 14.
- (3) In deciding the person's application the chief executive must have regard, among other things, to—
 - (a) the person's suitability to hold a licence under this Act; and
 - (b) the person's eligibility to hold the licence.

Division 2 Applications for licence

11 Application for licence

- (1) An applicant for a licence must—
 - (a) apply to the chief executive in the approved form; and

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- (b) state the term of the licence being applied for; and
 - (c) establish the applicant's eligibility for a licence; and
 - (d) state the names and addresses of the applicant's business associates; and
 - (e) 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 regulation; and
 - (b) a licence issue fee prescribed under 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; and
 - (d) for an applicant who is an individual, 2 recent colour photographs of the applicant of a size prescribed under a regulation and certified as photographs of the applicant in the way prescribed under a regulation.

12 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—
 - (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

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- (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.

13 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.
- (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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- 14 Applicant intending to carry on business to advise name of auditor**
- (1) If the applicant intends carrying on business under a licence and is required under section 110 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 the Administration Act, section 26.
- (b) give the chief executive evidence that the auditor has accepted the appointment as auditor.
- (2) In this section—
auditor see the Administration Act, section 25.

Division 3 Suitability of applicants and licensees

- 15 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 17 is not a suitable person to hold a licence.
- (2) An individual who is not a suitable person can not hold a licence.

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16 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 17 is not a suitable person to hold a licence.
- (2) A corporation that is not a suitable person can not hold a licence.

17 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—
 - (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;
- (v) whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act;

Note—

See the Corporations Act, section 1274AA.

- (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 a relevant Act or the Administration Act; and
 - (iv) whether each executive officer of the corporation is a suitable person to hold a licence;
 - (h) another thing the chief executive may consider under this Act.
- (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 fund under the repealed Act.

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

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18 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.

19 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.

20 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.
- (5) If the criminal history of the person includes a conviction recorded against the person, the commissioner’s report must be written.

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- (6) In this section—
applicant includes a nominated person mentioned in section 39(3) or 40(4).

21 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 20 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 39(3) or 40(4)—the person nominated by the applicant under section 39(3) or 40(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 web site 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
 - (b) the applicant withdraws the application before the chief executive asks for the report.

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- (5) In this section—
applicant includes proposed applicant.

22 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 20.
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.

23 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.

Division 4 Eligibility for licence

24 Eligibility for licence

- (1) An individual is eligible to obtain a licence only if the individual—
 - (a) is at least 18 years; and
 - (b) has the educational or other qualifications for a 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 licence is received by the chief executive—
 - (i) has been licensed as a commercial agent; or
 - (ii) has been the holder of an existing licence.
- (3) A corporation is eligible to obtain a licence only if—
 - (a) a person in charge of the corporation's business at a place is a commercial agent; and
 - (b) each director of the corporation is a suitable person to hold a licence under division 3 as if the director were an applicant for a licence.
- (4) The public trustee as a corporation sole is taken to be eligible to obtain a licence.
- (5) The chief executive of a department is taken to be eligible to obtain a licence.

[s 25]

Division 5 Issue of licences

25 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 to hold a licence 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; and
 - (c) the application is properly made.
- (3) For subsection (2)(c), an application is properly made only if it complies with section 11 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

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- (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.

26 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 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.

27 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.

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- (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.

28 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.
- (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 6 Restrictions on performing activities under licences

29 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) 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.

30 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.

Example—

E is a licensed employee of P, a licensed commercial agent. E's licence is not subject to a condition. However, P's licence is subject to the condition that P only engage in the collection of debts. Because of the condition, E is only authorised to engage in the collection of debts under E's licence during E's employment with P and while P is subject to the condition.

- (2) 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.

31 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.

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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 63 and 71.

Division 7 Renewal and restoration of licences

Subdivision 1 Renewal

32 Application for renewal

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

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- (b) a statutory declaration that the licensee did not operate a trust account during the relevant audit period.
 - (4) If requested by the chief executive, the application must, for a licensee who is an individual, also be accompanied by 2 recent colour photographs of the licensee that are—
 - (a) of a size prescribed under a regulation; and
 - (b) certified as photographs of the licensee in the way prescribed under a regulation.
 - (5) 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.
 - (6) In this section—
relevant audit period, for a licensee's licence, means the audit period ending immediately before the licence's expiry date.

33 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 to hold a licence 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

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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 32 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.

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

If an application is made under section 32, 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 33; or
- (b) withdrawn by the licensee; or
- (c) taken to have been withdrawn under section 23(3).

Subdivision 2 Restoration

35 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.
- (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) If requested by the chief executive, the application must, for a former licensee who is an individual, also be accompanied by 2 recent colour photographs of the former licensee that are—
 - (a) of a size prescribed under a regulation; and
 - (b) certified as photographs of the former licensee in the way prescribed under a regulation.
- (5) 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.

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(6) 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.

36 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 to hold a licence 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
 - (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 35 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.

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- (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 37, 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.

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

If an application is made under section 35, 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 36; or
- (b) withdrawn by the licensee; or
- (c) taken to have been withdrawn under section 23(3).

Division 8 Dealings with licences

Subdivision 1 Transfer of licence

38 Transfer of licence prohibited

A licence may not be transferred.

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Subdivision 2 Substitute licences

39 **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.

- (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—

- (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.

40 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

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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—
 - (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

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- (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.

41 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 39(3) or 40(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 3, 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
 - (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

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must give the licensee an information notice for the decision within 14 days after the decision is made.

42 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 39(1) or 40(2)—to the substitute licensee; or
 - (ii) for a substitute licensee appointed under section 41—to the chief executive and the substitute licensee; or
 - (c) the substitute licensee gives written notice to end the appointment from a date stated in the notice—
 - (i) for a substitute licensee appointed under section 39(1) or 40(2)—to the principal licensee making the appointment; or
 - (ii) for a substitute licensee appointed under section 41—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

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- (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.

43 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

44 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.

Note—

QCAT may deal with the conditions of a person's licence under section 121.

- (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.

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- (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 for the decision 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.

45 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 44, 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 a requirement under subsection (1), 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.

46 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.

47 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.
- (3) The licence is taken to be deactivated when the request, the licence and the prescribed fee are received by the chief executive under subsection (2).
- (4) A licence that is deactivated does not authorise the licensee to perform an activity under the authority of the licence.
- (5) The deactivation of a licence under this section does not—
- (a) affect the term of the licence; or
 - (b) entitle the licensee to a refund of fees in relation to the licence for the balance of the licence's term.

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- (6) The holder of a deactivated licence may apply to have the licence renewed under section 32 or restored under section 35 as a deactivated licence at a reduced fee prescribed under a regulation.
 - (7) A licensee may ask the chief executive to reactivate the licence.
 - (8) However, if the licence has been deactivated for 5 years or more, the licence may be reactivated only if the licensee satisfies any educational or other requirements prescribed under a regulation for the issue of the licence.
 - (9) A request under subsection (7) must be made in the approved form and be accompanied by the fee prescribed under a regulation.

Division 9 Immediate suspension and cancellation of licences

48 Immediate suspension

- (1) This section applies if—
 - (a) the chief executive reasonably considers that a licensee’s licence was obtained, or renewed or restored, because of materially incorrect or misleading information; or
 - (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

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- (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 or the Administration Act; or
 - (ii) 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.
 - (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.

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- (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.

49 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 10 General provisions about licences

50 Form of licence

- (1) A licence must be in the approved form.
- (2) However, the chief executive may approve—
 - (a) a form of licence for office display purposes; and
 - (b) a form of licence for personal identification purposes.

Examples—

- 1 A form of licence for office display purposes may be in the form of a certificate that may be framed and displayed in an office.
- 2 A form of licence for personal identification purposes may be in the form of a small photo identification card suitable for carrying easily on one's person.

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- (3) The licence must contain the following particulars—
- (a) the name of the licensee;
 - (b) the date of issue of the licence;
 - (c) the expiry date of the licence;
 - (d) for a personal identification licence, a recent photograph of the licensee;
 - (e) other particulars that may be prescribed under a regulation.

51 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.

52 Term of licence

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

53 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.
- (3) The chief executive must grant the application if the chief executive is satisfied the licence has been lost, stolen, 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.

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54 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 date of the application; and
 - (iv) the application number;
 - (b) for each licensee—
 - (i) the licensee's name; and
 - (ii) the licensee's registered office; and
 - (iii) the dates of issue and expiry of the licensee's current licence; and
 - (iv) any conditions imposed on the licence; and
 - (v) 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
 - (vi) if the licensee is a director of a licensed corporation, the name of the licensed corporation; and
 - (vii) if the licensee is an employee of another licensee, the name of the licensee's employer; and
 - (viii) the licensee's licence number; and
 - (ix) 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.

55 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 Authority and responsibilities

Division 1 Commercial agents' authority and responsibilities

Subdivision 1 Commercial agent licence

56 What a commercial agent licence authorises

- (1) A commercial agent licence authorises the holder of the licence (*commercial agent*) to perform the following

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activities as an agent for others for reward—

- (a) to find, or repossess, for a person any goods or chattels that the person is entitled to repossess under an agreement;
 - (b) to collect, or request payment of, debts;
 - (c) to serve any writ, claim, application, summons or other process.
- (2) A commercial agent may perform the activities in the carrying on of a business, either alone or with others, or as an employee of someone else.

Subdivision 2 Responsibilities of persons in charge of a licensee’s business for commercial subagents

57 Responsibility for acts and omissions of commercial subagent

- (1) A commercial agent who is a principal licensee must take reasonable steps to ensure each commercial subagent employed by the agent is properly supervised and complies with this Act.
- (2) A commercial agent who is an employed licensee in charge of a commercial agent’s business at a place must take reasonable steps to ensure each commercial subagent employed at the place is properly supervised and complies with this Act.
- (3) A commercial agent who fails to comply with subsection (1) or (2) is liable to disciplinary action under part 7, division 3.

Division 2 Conduct provisions

Subdivision 1 Carrying on business

58 Carrying on of business under commercial agent licence

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

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

59 Licensee to be in charge of commercial agent's business at a place

(1) A commercial agent who is an individual and a principal licensee must—

- (a) be in charge of the agent's business at the agent's registered office; and
- (b) if the commercial agent has more than 1 place of business, ensure that at each other place of business a commercial agent who is an individual is in charge of the agent's business at the place.

Maximum penalty—200 penalty units.

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

- (a) the individual in charge of the corporate agent's business at its registered office is a commercial agent; and
- (b) if the corporate agent has more than 1 place of business, at each other place of business an individual who is a

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commercial agent is in charge of the corporate agent's business at the place.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 145—200 penalty units; or
 - (b) for a corporation—1000 penalty units.
- (3) An individual must not be in charge of a commercial agent's business at more than 1 place.

Maximum penalty—200 penalty units.

Subdivision 2 Appointment

60 Appointment of commercial agent

- (1) A commercial agent must not act as a commercial agent for a person (*client*) to perform an activity (*service*) for the client unless—
- (a) the client appoints the agent in writing under this section; or
 - (b) a previous appointment has been assigned to the agent under the terms of the appointment or under section 62 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—
- (a) state the service to be performed by the commercial agent and how it is to be performed; and
 - (b) state—

- (i) the fees, charges and any commission payable for the services; and
 - (ii) the expenses, including travelling expenses, the commercial agent is authorised to incur in connection with—
 - (A) for a single appointment—the performance of the service; or
 - (B) for a continuing appointment—the performance of each service or category of service; and
 - (iii) the source and the estimated amount or value of any rebate, discount, commission or benefit that the commercial agent may receive in relation to any expenses the commercial agent 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
- (c) 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 commercial agent or someone authorised or apparently authorised to sign for the agent.
- (7) The commercial agent must give a copy of the signed appointment to the client.

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

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61 Form of appointment

- (1) The appointment must be in writing and contain any particulars that may be prescribed under a regulation.
- (2) An appointment that does not comply with subsection (1) is ineffective from the time it is made.

62 Proposal for assignment of appointments

- (1) This section applies if a commercial agent who holds appointments from clients to perform services for the clients under section 60 proposes to assign the appointments to another commercial agent (*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 commercial agent assigns the appointments, the commercial agent 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 commercial agent assigns the appointment under this section, the appointment is taken, for section 60, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.

Subdivision 3 Recovery of expenses and costs

63 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 the performance of an activity as a commercial agent unless, at the time the activity was performed, the person—
 - (a) held a commercial agent 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 commercial agent other than as provided by subsection (1) commits an offence.

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

64 Recovery of costs of commercial agent

- (1) A person must not recover or attempt to recover from a debtor the costs or expenses of a commercial agent for—
 - (a) collecting or attempting to collect a debt owed by the debtor; or
 - (b) repossessing or attempting to repossess goods or chattels from the debtor.

Maximum penalty—200 penalty units.

- (2) Subsection (1)(b) does not apply to prevent a person who appoints a commercial agent to repossess goods or chattels from a debtor from recovering the commercial agent’s costs and expenses if the person has a right under an agreement with the debtor or otherwise to recover the costs or expenses.
- (3) Costs or expenses recovered in contravention of subsection (1) may be recovered by the debtor as a debt.

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- (4) This section applies subject to the National Credit Code.
- (5) In this section—
 - costs* do not include—
 - (a) stamp duty; or
 - (b) legal costs fixed by, or payable under, rules of court or a court order.

debtor includes a person from whom goods or chattels may be lawfully repossessed.

National Credit Code means the *National Credit Code* in schedule 1 of the *National Consumer Credit Protection Act 2009* (Cwlth).

Subdivision 4 Code of conduct

65 Code of conduct

A regulation may prescribe a code of conduct about commercial agency practice that may include the following—

- (a) setting conduct standards for commercial agents and commercial subagents;
- (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.

66 Code of conduct complaints and action chief executive may take

- (1) A person aggrieved by the conduct of a commercial agent or commercial subagent may complain in writing to the chief executive about the conduct.

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- (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 116.

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

Division 3 General

67 Registered office

A commercial agent's *registered office* is—

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

68 Commercial agent must notify chief executive of change in place of business etc.

- (1) A commercial agent who is a principal licensee must—

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- (a) notify the chief executive in the approved form of any change in the agent'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 agent 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 agent carries on business within 14 days after the opening.

Maximum penalty—200 penalty units.

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

Maximum penalty—200 penalty units.

69 Display and publication of licensee's name

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

Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

70 Principal licensee must keep employment register

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

Maximum penalty—200 penalty units.

- (2) The commercial agent must enter, 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 a commercial agent or commercial subagent at the place; and
 - (b) if the employee is a commercial subagent, the activities the subagent is authorised to perform for the agent during the subagent’s employment by the agent.

Maximum penalty—200 penalty units.

- (3) The commercial agent must—
 - (a) enter the particulars about each employee, and for each commercial subagent, the activities the subagent 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.

Division 4 Offences

71 Acting as commercial agent

- (1) A person must not, as an agent for someone else for reward, perform an activity that may be done under the authority of a commercial agent licence unless the person—

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- (a) holds a commercial agent 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 commercial agent unless—
 - (a) the person holds a commercial agent 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 commercial agent, a person *acts* as a commercial agent if the person—
 - (a) performs an activity mentioned in section 56(1); or
 - (b) advertises, notifies or states that the person—
 - (i) performs an activity mentioned in section 56(1); or
 - (ii) is willing to perform an activity mentioned in section 56(1); or
 - (c) in any way holds out as being ready to perform an activity mentioned in section 56(1).

- (4) However—
 - (a) a person does not act as a commercial agent only because the person requests, by telephone, payment of a debt for a commercial agent as an employee of the agent if the request is made under the supervision of the agent; and
 - (b) a lawyer does not act as a commercial agent only because the lawyer collects debts in the lawyer's practice if the lawyer complies with the requirements of the *Legal Profession Act 2007* in relation to the debts.

- (5) In this section—

lawyer means an Australian lawyer who, under the *Legal Profession Act 2007*, may engage in legal practice in this State.

72 Pretending to be commercial subagent

- (1) A person must not act as a commercial subagent unless the person holds a registration certificate as a commercial subagent.

Maximum penalty—200 penalty units.

- (2) A person does not act as a commercial subagent only because the persons requests, by telephone, payment of a debt for a commercial agent as an employee of the agent if the request is made under the supervision of the agent.

- (3) In this section—

act as a commercial subagent, for a person, includes hold out that the person is a commercial subagent.

73 Commercial agent must not act for more than 1 party

- (1) A commercial agent who is appointed to perform an activity for a person (*client*) in relation to another person must not accept appointment from the other person to perform an activity while the agent continues to act for the client in relation to the other person.

Maximum penalty—200 penalty units.

- (2) Subsection (1) does not apply if the commercial agent acts for more than 1 party in relation to a debt agreement under the *Bankruptcy Act 1966* (Cwlth), part IX.

74 Production of licence or registration certificate

- (1) A commercial agent must, if asked by a person with whom the agent is dealing, produce the agent's licence for inspection by the person.

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Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

75 Employment of persons in commercial agent's business

- (1) A commercial agent must not employ, as a commercial subagent, a person the commercial agent knows, or ought to know, does not hold a registration certificate as a commercial subagent.

Maximum penalty—200 penalty units.

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

Maximum penalty—200 penalty units.

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

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 145—200 penalty units; or
(b) for a corporation—1000 penalty units.

- (4) In this section—

employ includes—

- (a) engage on a contract for services or commission; and
(b) use the services of, whether or not for reward.

76 Licence not to be used improperly

- (1) A commercial agent or subagent must not—
- (a) represent that the person’s commercial agent licence or registration certificate entitles the person to exercise a power the person may not lawfully exercise; or
 - (b) use the person’s licence or certificate to exercise a power the person may not lawfully exercise.

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

- (2) In this section—

represent includes suggest and imply.

use includes attempt to use.

77 Unlawful entry

A commercial agent or subagent must not, when performing the activities of a commercial agent, enter any premises without lawful authority.

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

78 Misrepresentation

- (1) A commercial agent or subagent must not by any false or misleading representation induce a person to enter into an arrangement for the payment of a debt.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) In this section—

false or misleading, in relation to a representation, includes the wilful concealment of a material fact in the representation.

induce includes attempt to induce.

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79 Impersonating commercial agents

- (1) A creditor, when dealing with a person for payment of a debt, must not use any name, description, document or device intended to make the person believe that the person is not dealing directly with the creditor, but with a commercial agent acting on the creditor's behalf.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A commercial agent must not give any document to a creditor to enable the creditor to make a third person believe that the third person is dealing directly with the commercial agent.

Maximum penalty—200 penalty units or 2 years imprisonment.

Example for subsection (2)—

commercial agent's letterhead or stationery

Part 4 Employee registration

Division 1 Activities authorised under registration certificate

80 What a registration certificate authorises

- (1) A registration certificate authorises the holder of the certificate to perform any activity that may be performed by the commercial agent who employs the holder.
- (2) However, the 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 2 How to obtain registration

81 Steps involved in obtaining registration

- (1) A person who wishes to obtain registration as a commercial subagent must be a suitable person to hold registration under division 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 person's application the chief executive must having regard, among other things, to—
 - (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 3 Applications for registration

82 Application for registration

- (1) An applicant for registration as a commercial subagent must—
 - (a) be an individual; and
 - (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 commercial subagent; and
 - (e) provide any information the chief executive reasonably requires to decide whether the applicant is suitable and eligible to be a commercial subagent.
- (2) The application must be accompanied by—

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- (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; and
- (d) 2 recent colour photographs of the applicant of a size prescribed under a regulation and certified as photographs of the applicant in the way prescribed under a regulation.

83 Requirement to give chief executive information or material about application

- (1) The chief executive may, by written notice given to an applicant for registration as a commercial subagent, 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, within the stated reasonable period, the applicant fails to comply with the chief executive's requirement.

Division 4 Suitability of applicants

84 Suitability of applicants

- (1) A person is not a suitable person to obtain registration as a commercial subagent if the person is—
 - (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 85 is not a suitable person to obtain registration as a commercial subagent.
- (2) An individual who is not a suitable person can not obtain registration as a commercial subagent.

85 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 commercial subagent, 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

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- (iii) whether the person is in a position to significantly influence 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 commercial subagent;
 - (i) whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act;
- Note—*
- See the Corporations Act, section 1274AA.
- (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 commercial subagent, 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.

86 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 commercial subagent.
- (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.

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- (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.

87 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 86 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 as a commercial subagent 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.

88 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 86.
Maximum penalty—100 penalty units.
- (2) However, the person does not contravene subsection (1) if—

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- (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 commercial subagent.

89 Requirement to give chief executive information or material about suitability

- (1) This section applies to an applicant for registration as a commercial subagent 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 5 Eligibility for registration

90 Eligibility for registration as commercial subagent

- (1) An individual is eligible to obtain registration as commercial subagent only if the individual—
 - (a) is at least 18 years; and
 - (b) has the educational or other qualifications that may be prescribed under a regulation.

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- (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 registration is received by the chief executive—
 - (i) has been the holder of a registration certificate under this Act as a commercial subagent; or
 - (ii) has been the holder of a comparable certificate under the repealed Act.
- (3) In this section—

comparable certificate, under the repealed Act, means a certificate of registration as a commercial subagent granted under the repealed Act.

Division 6 Issue of registration certificate

91 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 obtain 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 82 and is accompanied by the things mentioned in that section.

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- (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.

92 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.

**Division 7 Renewal and restoration of
 registration certificates**

Subdivision 1 Renewal

93 Application for renewal

- (1) A commercial subagent may only apply for renewal of the subagent'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 commercial subagent—the amount of the costs required to be paid.
- (3) If requested by the chief executive, the application must be accompanied by 2 recent colour photographs of the applicant that are—
 - (a) of a size prescribed under a regulation; and
 - (b) certified as photographs of the applicant in the way prescribed under a regulation.

94 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.

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- (2) The chief executive may renew the certificate only if the chief executive is satisfied—
 - (a) the commercial subagent is a suitable person to obtain registration; and
 - (b) the application is properly made; and
 - (c) the commercial subagent meets the eligibility requirements for the certificate.
- (3) For subsection (2)(b), an application is properly made only if it complies with section 93(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 applicant an information notice within 14 days after the decision is made.

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

If an application is made under section 93, the commercial subagent's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the application for renewal is decided under section 94 or taken to have been withdrawn under section 89(3).

Subdivision 2 Restoration

96 Application for restoration

- (1) If a commercial subagent's registration certificate expires, the person (*former subagent*) 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

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- (c) state the term of the registration being applied for; and
 - (d) be accompanied by—
 - (i) an application fee prescribed under a regulation; and
 - (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.
 - (3) If requested by the chief executive, the application must be accompanied by 2 recent colour photographs of the former subagent that are—
 - (a) of a size prescribed under a regulation; and
 - (b) certified as photographs of the former subagent in the way prescribed under a regulation.

97 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 commercial subagent is a suitable person to obtain registration; and
 - (b) the application is properly made; and
 - (c) the commercial subagent meets the eligibility requirements for the certificate.
- (3) For subsection (2)(b), an application is properly made only if it complies with section 96(2) and is accompanied by the things mentioned in that subsection.

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- (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.
- (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 98, 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.

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

If an application is made under section 96, the commercial subagent'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 97 or taken to have been withdrawn under section 89(3).

Division 8 Dealings with registration certificates

Subdivision 1 Transfer of registration certificate

99 Transfer of registration certificate prohibited

A registration certificate may not be transferred.

Subdivision 2 **General**

100 Amendment of registration certificate conditions

- (1) The chief executive may amend the conditions of a registration certificate—
 - (a) on the commercial subagent'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 121.

- (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 commercial subagent 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 commercial subagent—
 - (i) of the particulars of the proposed amendment; and
 - (ii) that the commercial subagent 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 commercial subagent; and
 - (b) have regard to submissions made to the chief executive by the commercial subagent 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.

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- (6) If the chief executive decides to amend the conditions of a registration certificate under subsection (1)(c), the chief executive must give the commercial subagent an information notice for the decision 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 commercial subagent; 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 commercial subagent an information notice for the decision within 14 days after the decision is made.

101 Return of registration certificate for amendment of conditions

- (1) If the chief executive amends the conditions of a registration certificate under section 100, the chief executive may require the commercial subagent to produce the certificate for amendment within a stated period of not less than 14 days.
- (2) The commercial subagent must comply with a requirement under subsection (1), unless the person has a reasonable excuse.

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

102 Surrender of registration certificate

- (1) A commercial subagent may surrender the subagent'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 9 Immediate suspension and
 cancellation of registration
 certificates**

103 Immediate suspension

- (1) This section applies if the chief executive believes, on reasonable grounds, that—
 - (a) a commercial subagent’s registration certificate, or a renewal or restoration of the registration certificate, was obtained because of materially incorrect or misleading information; or
 - (b) both—
 - (i) an irregularity or deficiency exists in a licensee’s trust account; and
 - (ii) a commercial subagent of the licensee may be responsible for the irregularity or deficiency; or
 - (c) a commercial subagent—
 - (i) has contravened or is contravening this Act or the Administration Act; or
 - (ii) is likely or proposing to engage in conduct that would contravene this Act or the Administration Act.
- (2) The chief executive may suspend the commercial subagent’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 commercial subagent an information notice within 14 days after suspending the commercial subagent’s registration.
- (5) The commercial subagent must return the certificate to the chief executive within 14 days after the commercial subagent

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receives the notice, unless the commercial subagent has a reasonable excuse.

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

104 Immediate cancellation

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

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

Division 10 General provisions about commercial subagent registration

105 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
 - (b) a form of certificate for personal identification purposes.

Examples—

- 1 A form of certificate for office display purposes may be in the form suitable for framing and display in an office.
 - 2 A form of certificate for personal identification purposes may be in the form of a small photo identification card suitable for carrying easily on one's person.
- (3) The certificate must contain the following particulars—
 - (a) the name of the commercial subagent;
 - (b) the date of issue of the certificate;
 - (c) the expiry date of the certificate;

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- (d) for a personal identification certificate, a recent photograph of the commercial subagent;
 - (e) other particulars that may be prescribed under a regulation.

106 Term of registration certificate

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

107 Replacement certificates

- (1) A commercial subagent 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.
- (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.

108 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

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- (ii) the date of the application; and
 - (iii) the application number;
 - (b) for each commercial subagent—
 - (i) the commercial subagent's name; and
 - (ii) the dates of issue and expiry of the commercial subagent's current registration certificate; and
 - (iii) any conditions imposed on the certificate; and
 - (iv) the commercial subagent's registration certificate number; and
 - (v) particulars of any surrender, suspension, cancellation or revocation of the commercial subagent's registration certificate or any licence or certificate issued to the commercial subagent 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.

109 Commercial subagents to notify chief executive of changes in circumstances

- (1) A commercial subagent must give written notice to the chief executive of a prescribed change in the commercial subagent'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 5 Trust accounts

110 Opening and maintaining trust accounts

- (1) A principal licensee must open and maintain a trust account or special trust account in accordance with the Administration Act if an amount is likely to be received by the licensee when performing the activities of a commercial agent.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) In this section—

amount 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.

Part 6 Claims against the fund

111 Definitions for pt 6

In this part—

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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.

112 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) a contravention of section 135 by a relevant person;
 - (b) 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.

113 Persons who can not claim

- (1) A person who suffers financial loss because of, or arising out of, the stealing, misappropriation or misapplication of an amount that a relevant person was directed to invest under the Administration Act, section 13 can not make a claim against the fund.

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- (2) The following persons can not make a claim against the fund for any of the following financial losses—
- (a) a relevant person who suffers financial loss in the course of performing an activity, or carrying on business, as a relevant person;
 - (b) 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.

Part 7 Jurisdiction of QCAT

Division 1 Preliminary

114 Definitions for pt 7

In this part—

commercial subagent includes a former subagent.

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 subagent means a person who was a commercial subagent, or the holder of a certificate of registration 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.

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Division 2 Jurisdiction

115 Jurisdiction

For this Act, QCAT has the following jurisdiction—

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

Division 3 Disciplinary proceedings

116 Grounds for starting disciplinary proceedings

- (1) The following are grounds for starting a disciplinary proceeding against a licensee or commercial subagent—
 - (a) the licensee or commercial subagent has been convicted of—
 - (i) an indictable offence; or
 - (ii) an offence against this Act or the Administration Act;
 - (b) the licensee or commercial subagent has contravened or breached—
 - (i) this Act, including a code of conduct; or
 - (ii) the Administration Act; or
 - (iii) an undertaking given under part 8, division 2; or
 - (iv) a corresponding law;
 - (c) the licensee or commercial subagent has been disqualified from holding a licence under a corresponding law;
 - (d) an amount has been paid from the fund because the licensee or commercial subagent did, or omitted to do, something that gave rise to a claim against the fund;

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- (e) the licensee or commercial subagent fraudulently or improperly obtained, or helped someone else to fraudulently or improperly obtain, a licence or registration certificate;
 - (f) the licensee or commercial subagent 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
 - (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 commercial subagents, 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 121; 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;

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- (h) for a commercial subagent—
 - (i) the commercial subagent is not eligible to be employed as a commercial subagent; or
 - (ii) the commercial subagent 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
 - (b) the officer could not, with reasonable diligence, have prevented the doing of the act or the making of the omission.

117 Starting disciplinary proceedings

The chief executive may apply to QCAT to conduct a proceeding to decide whether grounds exist under section 116 for taking disciplinary action against a licensee or commercial subagent.

Division 4 Review proceedings

118 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.

119 Stay of operation of decisions

- (1) A decision of the chief executive, other than a decision made under section 48 or 103, 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.

120 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 5 Proceedings generally

Subdivision 1 QCAT's orders

121 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 chief executive, within the time stated in the order, a fine of not more than—
 - (i) for an individual—200 penalty units; or

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- (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 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)(e)(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 146(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.

122 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.
- (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) If 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.

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Subdivision 2 Chief executive's right of appeal

123 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 8 Injunctions and undertakings

Division 1 Injunctions

124 Injunctions

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

125 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.

126 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 a 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.

127 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.

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128 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.

129 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.

Division 2 Undertakings

130 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 a 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

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- (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 132.

131 Undertaking about other matter

Without limiting section 130, 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

132 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

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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.

133 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 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

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- (b) the court is satisfied that the person contravened the undertaking during the period for which the bond was given.

134 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 9 General contraventions,
evidentiary matters and legal
proceedings**

Division 1 General contraventions

135 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.

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- (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.

136 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*, sections 24 or 25.

137 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 this section, an amount is alleged to be payable to the licensee for recouping expenditure lawfully incurred by the licensee in connection with the transaction, the licensee must establish to the court’s satisfaction, on the balance of probabilities, that the expenditure was lawfully incurred.
- (3) If a licensee is convicted of an offence against subsection (1) or fails to satisfy the court under subsection (2) about expenditure incurred, the convicting court must also order the licensee to refund the amount to which the licensee was not entitled to the person from whom it was obtained.
- (4) 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.

138 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.

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Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A person must not borrow, hire or buy a licensee's licence.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (3) If a person who is not the holder of an appropriate licence or the licensee's substitute has the effective or apparent management or control of a licensee's business, the licensee is taken to have lent, and the person is taken to have borrowed, the licensee's licence.

139 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.

140 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.
- (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

141 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 registrar 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;

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- (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.
- (4) In this section—

registrar means the principal registrar under the QCAT Act.

142 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

143 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—
 - (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.

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144 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.

145 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.

146 Power of court

- (1) A court may, in addition to any other penalty it may impose, order that a licensee’s licence or a commercial agent’s registration certificate be suspended for a stated period or cancelled if the licensee or commercial subagent 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.

147 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 10 General

148 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.

149 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.

150 Criminal Proceeds Confiscation Act 2002 not limited

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

151 Delegation—chief executive

- (1) The chief executive may delegate the chief executive's powers, other than power under section 148, 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

152 Approved forms

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

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153 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.

154 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 rate of commission that may be charged for transactions by licensees;
 - (c) imposing a penalty for a contravention of a regulation or a code of conduct of not more than 20 penalty units;
 - (d) imposing limits on out-of-pocket expenses incurred in the performance of activities under a licence;
 - (e) the keeping of records, including the form in which a record is kept;
 - (f) the keeping of receipts and evidence of expenditure;
 - (g) the length of time a document required to be kept under this Act is to be kept.

Part 11 Transitional and savings provisions

155 Definitions for pt 11

In this part—

commencement means commencement of this section.

existing licence means a property agents and motor dealers licence (commercial agent) issued under the repealed Act.

existing registration certificate means a registration certificate as a commercial subagent issued under the repealed Act.

156 Existing licences

- (1) This section applies to a person who, immediately before the commencement, held an existing licence under the repealed Act.
- (2) The person, on the commencement, is taken to be the holder of a commercial agent licence (the *transitioned licence*).
- (3) If the existing licence held by the person immediately before the commencement was subject to a condition (the *current condition*), the transitioned licence for the person is also taken to be subject to a condition in the same terms, so far as practicable, as the current condition.
- (4) A 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 44

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157 Existing registration certificates

- (1) This section applies to a person who, immediately before the commencement, held an existing registration certificate under the repealed Act.
- (2) The person, on the commencement, is taken to be the holder of a registration certificate as a commercial subagent (the *transitioned registration certificate*).
- (3) If the existing registration certificate held by the person immediately before the commencement was subject to a condition (the *current condition*), the transitioned registration certificate for the person 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 100

158 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 a commercial agent 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 a registration certificate as a commercial subagent.
 - (6) If an application is about the renewal or restoration of an existing licence, the licence is taken to continue in force from the day that it would, apart from this section, have expired until the application for renewal or restoration is—
 - (a) decided under this Act; or
 - (b) withdrawn.
 - (7) If an application is about the renewal or restoration of an existing registration certificate, the certificate is taken to continue in force from the day that it would, apart from this section, have expired until the application for renewal or restoration is—
 - (a) decided under this Act; or
 - (b) withdrawn.

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159 Restoration of expired existing licences

- (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 35, for restoration of the existing licence as if the existing licence were a commercial agents licence.

Note—

Section 35(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 37 applies to the existing licence.

160 Restoration of expired existing certificates

- (1) This section applies if a person's existing certificate expired within 3 months before the commencement.
- (2) The person may apply under this Act, section 96, for restoration of the existing certificate as if the existing certificate were a registration certificate.

Note—

Section 96(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 98 applies to the existing certificate.

161 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 application was for a property agents and motor dealers licence (commercial agent) under the repealed Act; and
 - (c) 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.

162 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 47 applies to the licence as if the licence were a commercial agent 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

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be decided under this Act and section 47 applies to the request.

163 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 commercial agent licence apply to the existing licence as if the existing licence were a commercial agent licence under this Act.
- (4) The provisions of this Act relating to the suspension of a certificate of registration apply to the existing registration certificate as if the existing registration certificate were a certificate of registration under this Act.

164 Existing appointments

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

165 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 was 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.

166 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.

167 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.

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- (2) The provisions of this Act relating to injunctions apply to an injunction continued under subsection (1).
- (3) In addition to section 126, 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
 - (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.

168 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 130 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.

169 Proceedings for offences under repealed Act

- (1) This section applies if a person is alleged to have committed an offence against any of the provisions of the repealed Act mentioned in schedule 2 before the commencement.
- (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.

170 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 134.

Schedule 1 Decisions subject to review

section 118

- section 17(2) (Chief executive must consider suitability of applicants and licensees)
- section 25(1) (Chief executive may issue or refuse to issue licence)
- section 28(1) (Licence—conditions)
- section 33(1) (Chief executive may renew or refuse to renew licence)
- section 36(1) (Chief executive may restore or refuse to restore licence)
- section 41(1) (Chief executive may appoint or refuse to appoint substitute licensee)
- section 44(1) (Amendment of licence conditions)
- section 48(2) (Immediate suspension)
- section 85(2) (Chief executive must consider suitability of applicants)
- section 91(1) (Chief executive may issue or refuse to issue registration certificate)
- section 92(1) (Registration certificate—conditions)
- section 94(1) (Chief executive may renew or refuse to renew registration certificate)
- section 97(1) (Chief executive may restore or refuse to restore registration certificate)
- section 100(1) (Amendment of registration certificate conditions)
- section 103(2) (Immediate suspension)

**Schedule 2 Proceedings for offences under
repealed Act—offence
provisions**

section 169(1)

section 33(1)
section 64(2) or (3)
section 65(3) or (4)
section 68(2)
section 71(2) or (3)
section 74(6)
section 75(2)
section 77
section 81(1)
section 88(1)
section 102(2)
section 104(5)
section 105(2)
section 110(1)
section 343(1), (2) or (3)
section 344(1) or (7)
section 346(2)
section 347(1)
section 351(1)
section 352(1) or (2)
section 353(1), (2) or (3)
section 354(1) or (2)

- section 355(1)
- section 356(1)
- section 357(1) or (2)
- section 358(1), (2) or (3)
- section 359(1)
- section 360
- section 361(1)
- section 362(1) or (2)
- section 529A(6)
- section 573(2)
- section 578(1)
- section 579(1)
- section 581(1) or (2)
- section 582(1)
- section 583(1) or (3)
- section 591(2)

Schedule 3 Dictionary

section 8

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 *Motor Dealers and Chattel Auctioneers Act 2010*; or
- (b) the *Property Agents Act 2010*.

application for review see section 118.

approved form means a form approved under section 152.

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

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 the Administration Act, section 34.

audit report see the Administration Act, section 34.

business address, of a licensee, see section 12(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.

claim fund means the claim fund established under the Administration Act, section 42.

code of conduct means the code of conduct prescribed under section 65.

commencement, for part 11, see section 155.

commercial agent see section 56(1).

commercial subagent—

(a) generally, means a person who holds a registration certificate as a commercial subagent; or

(b) for part 7, see section 114.

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

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.

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.

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 21(2); or

(b) for an applicant for, or for the renewal or restoration of, registration as a commercial subagent—section 87(2).

employed licensee means a licensee who performs the activities of a licensee as the employee of someone else.

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, for part 11, see section 155.

existing registration certificate, for part 11, see section 155.

financial loss, for part 6, see section 111.

former licensee—

- (a) generally, means a person who held a licence under this or the repealed Act; and
- (b) for part 7, see section 114.

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

fund means the claim fund.

holder—

- (a) of a commercial agent 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 9.

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 commercial agent licence.

licence register see section 54(1).

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

licensee—

- (a) generally, means the holder of a commercial agent licence that is in force; or

(b) for part 6, see section 111; or

(c) for part 7, see section 114.

misleading includes deceptive.

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

registered office, of a commercial agent, see section 67.

registration certificate means a registration certificate issued under section 91.

registration certificate register see section 108(1).

relevant person, for part 6, see section 111.

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

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

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

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

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.

trust account means a trust account kept under the Administration Act.