



Queensland

## Property Agents Bill 2010

### Contents

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<b>Part 1</b>	<b>Preliminary</b>	
<b>Division 1</b>	<b>Introduction</b>	
1	Short title . . . . .	15
2	Commencement . . . . .	15
3	Act binds all persons . . . . .	15
4	Exemption—auctions . . . . .	15
5	Exemption—liquidators, controllers and receivers . . . . .	16
6	Exemption—financial institutions and trustee companies . . . . .	17
7	Exemption—non-profit corporations . . . . .	17
<b>Division 2</b>	<b>Object</b>	
8	Objects of Act . . . . .	18
<b>Division 3</b>	<b>Interpretation</b>	
9	Meaning of beneficial interest . . . . .	20
10	Meaning of in charge . . . . .	23
11	Meaning of open listing . . . . .	23
12	Meaning of residential property . . . . .	23
13	Meaning of unsolicited invitation . . . . .	25
14	Difference between exclusive agency and sole agency . . . . .	25
<b>Part 2</b>	<b>Licensing</b>	
<b>Division 1</b>	<b>Categories of licence</b>	
15	Categories of licence . . . . .	27
<b>Division 2</b>	<b>Limited property agent's licence</b>	
16	Limited property agent's licence . . . . .	27
<b>Division 3</b>	<b>How to obtain a licence</b>	
17	Steps involved in obtaining a licence . . . . .	28
<b>Division 4</b>	<b>Applications for licence</b>	
18	Application for licence . . . . .	28
19	Applicant must specify business address . . . . .	29

Contents

---

20	Special provision for applicant for resident letting agent's licence	30
21	Requirement to give information or material about application . .	31
22	Applicant intending to carry on business to advise name of auditor . . . . .	31
<b>Division 5</b>	<b>Suitability of applicants and licensees</b>	
23	Suitability of applicants and licensees—individuals . . . . .	31
24	Suitability of applicants and licensees—corporations . . . . .	32
25	Chief executive must consider suitability of applicants and licensees . . . . .	32
26	Public trustee is a suitable person . . . . .	34
27	Chief executive of department is a suitable person . . . . .	34
28	Defence Housing Authority is a suitable person . . . . .	34
29	Investigations about suitability of applicants and licensees . . . . .	35
30	Costs of criminal history report. . . . .	35
31	Confidentiality of criminal history . . . . .	36
32	Requirement to give chief executive information or material about suitability. . . . .	37
<b>Division 6</b>	<b>Eligibility for licence</b>	
<b>Subdivision 1</b>	<b>Property agent's licence</b>	
33	Eligibility for property agent's licence . . . . .	37
<b>Subdivision 2</b>	<b>Resident letting agent's licence</b>	
34	Eligibility for resident letting agent's licence . . . . .	38
35	Public trustee is eligible to obtain licence. . . . .	40
36	Chief executive of department is eligible to obtain licence. . . . .	40
37	Defence Housing Authority is eligible to obtain licence . . . . .	40
<b>Division 7</b>	<b>Issue of licences</b>	
38	Chief executive may issue or refuse to issue licence . . . . .	41
39	Licence—public trustee . . . . .	42
40	Licence—chief executive of department. . . . .	43
41	Licence—Defence Housing Authority. . . . .	43
42	Licence—conditions . . . . .	43
<b>Division 8</b>	<b>Restrictions on performing activities under licences</b>	
43	Restriction—corporations. . . . .	44
44	Restriction—individuals . . . . .	44
45	Restriction—conditions. . . . .	45

---

<b>Division 9</b>	<b>Renewal and restoration of licences</b>	
<b>Subdivision 1</b>	<b>Renewal</b>	
46	Application for renewal . . . . .	45
47	Chief executive may renew or refuse to renew licence. . . . .	46
48	Licence taken to be in force while application for renewal is considered . . . . .	47
<b>Subdivision 2</b>	<b>Restoration</b>	
49	Application for restoration. . . . .	48
50	Chief executive may restore or refuse to restore licence . . . . .	49
51	Licence taken to be in force while application for restoration is considered . . . . .	50
<b>Division 10</b>	<b>Dealings with licences</b>	
<b>Subdivision 1</b>	<b>Transfer of licence</b>	
52	Transfer of licence prohibited . . . . .	50
<b>Subdivision 2</b>	<b>Substitute licences</b>	
53	Appointment of substitute licensee—principal licensee—individual . . . . .	51
54	Appointment of substitute licensee—employed licensee in charge of a licensee’s business at a place . . . . .	52
55	Chief executive may appoint or refuse to appoint substitute licensee . . . . .	54
56	Substitute licensee . . . . .	55
57	Limitation on period of substitution. . . . .	56
<b>Subdivision 3</b>	<b>General</b>	
58	Amendment of licence conditions. . . . .	56
59	Return of licence for amendment of conditions or when suspended or cancelled . . . . .	57
60	Surrender of licence . . . . .	58
61	Licence may be deactivated. . . . .	58
<b>Division 11</b>	<b>Immediate suspension and cancellation of licences</b>	
62	Immediate suspension . . . . .	59
63	Immediate cancellation. . . . .	60
<b>Division 12</b>	<b>General provisions about licences</b>	
64	Form of licence . . . . .	61
65	Display of licence . . . . .	62
66	Term of licence . . . . .	62
67	Replacement licences . . . . .	62
68	Register of licences . . . . .	62

---

Contents

---

69	Licensees to notify chief executive of changes in circumstances.	64
<b>Part 3</b>	<b>Property agents</b>	
<b>Division 1</b>	<b>Property agent's authorisation and responsibility</b>	
<b>Subdivision 1</b>	<b>Property agent's licence</b>	
70	What a property agent's licence authorises . . . . .	64
<b>Division 2</b>	<b>Responsibilities of persons in charge of a licensee's business for salespersons</b>	
71	Responsibility for acts and omissions of salespersons . . . . .	65
<b>Division 2</b>	<b>Conduct provisions</b>	
<b>Subdivision 1</b>	<b>Carrying on business</b>	
72	Carrying on of business under property agent's licence . . . . .	66
73	Licensee to be in charge of a property agent's business at a place . . . . .	66
<b>Subdivision 2</b>	<b>Appointment</b>	
74	Appointment of property agent—general . . . . .	68
75	Form of appointment . . . . .	70
76	Pre-appointment advice about types of appointment. . . . .	70
77	Appointment of property agent—sole and exclusive agencies. . . . .	71
78	Proposal for assignment of appointments . . . . .	72
79	Restriction on reappointment of property agents for sales of residential property. . . . .	73
80	Form of reappointment . . . . .	73
81	When appointments and reappointments are ineffective . . . . .	73
<b>Subdivision 3</b>	<b>Disclosure of interest</b>	
82	Disclosures to prospective buyer . . . . .	74
<b>Subdivision 4</b>	<b>Recovery of reward or expense</b>	
83	Commission may be claimed only in relation to actual amounts . . . . .	76
84	Restriction on recovery of reward or expense—no proper authorisation etc. . . . .	76
85	Restriction on recovery of reward or expense above amount allowed . . . . .	76
86	Excess commission etc. to be repaid. . . . .	77
<b>Subdivision 5</b>	<b>Interests in property</b>	
87	Definition for sdiv 5. . . . .	78
88	Beneficial interest—options . . . . .	78
89	Beneficial interest—other than options. . . . .	79
90	Return of beneficial interest if in form of commission. . . . .	80

---

<b>Subdivision 6</b>	<b>Lands not lawfully useable for residential purposes</b>	
91	Definition for sdiv 6 . . . . .	80
92	Application of sdiv 6 . . . . .	80
93	Notice to be given about vacant land . . . . .	81
94	Buyer's rights if notice not given or materially defective . . . . .	82
95	Liability to punishment under s 149 or 150 additional to other liabilities at law . . . . .	83
<b>Subdivision 7</b>	<b>Sales of particular businesses</b>	
96	Application of sdiv 7 . . . . .	84
97	Notice to be given about sale of resident letting agent's business . . . . .	84
<b>Subdivision 8</b>	<b>Code of conduct</b>	
98	Code of conduct . . . . .	85
99	Code of conduct complaints and action chief executive may take . . . . .	85
<b>Division 3</b>	<b>General</b>	
100	Registered office . . . . .	86
101	Property agent must notify chief executive of change in place of business etc. . . . .	86
102	Display and publication of licensee's name . . . . .	87
103	Principal licensee must keep employment register . . . . .	88
<b>Division 4</b>	<b>Offences</b>	
104	Acting as property agent . . . . .	89
105	Pretending to be property agent salesperson . . . . .	90
106	Property agent must not act for more than 1 party. . . . .	91
107	Production of licence or registration certificate. . . . .	91
108	Employment of persons in real estate business . . . . .	91
<b>Part 4</b>	<b>Resident letting agents</b>	
<b>Division 1</b>	<b>Resident letting agent's licence</b>	
109	What a resident letting agent's licence authorises . . . . .	92
<b>Division 2</b>	<b>Conduct provisions</b>	
<b>Subdivision 1</b>	<b>Carrying on business</b>	
110	Carrying on of business under resident letting agent's licence . . . . .	94
111	Licensee to be in charge of a resident letting agent's business at a place . . . . .	95
<b>Subdivision 2</b>	<b>Appointment</b>	
112	Appointment of resident letting agent. . . . .	96
113	Form of appointment . . . . .	98

---

Contents

---

114	Assignment of appointments . . . . .	98
<b>Subdivision 3</b>	<b>Recovery of reward or expense</b>	
115	Commission may be claimed only in relation to actual amounts .	99
116	Restriction on remedy for reward or expense. . . . .	99
117	Excess fees etc. to be repaid . . . . .	100
<b>Subdivision 4</b>	<b>Code of conduct</b>	
118	Code of conduct . . . . .	101
119	Complaints about conduct and action chief executive may take .	101
<b>Division 3</b>	<b>General</b>	
120	Registered office . . . . .	102
121	Resident letting agent to notify chief executive of change in place of business etc. . . . .	102
122	Display and publication of licensee's name . . . . .	103
123	Principal licensee must keep employment register . . . . .	104
124	Access to particular documents . . . . .	104
<b>Division 4</b>	<b>Offences</b>	
125	Acting as resident letting agent . . . . .	105
126	Resident letting agent must not act for more than 1 party . . . . .	106
127	Production of licence . . . . .	106
<b>Part 5</b>	<b>Employee registration as a property agent salesperson</b>	
<b>Division 1</b>	<b>Registered employees' authorisation</b>	
128	What a registration certificate authorises . . . . .	106
<b>Division 2</b>	<b>How to obtain registration</b>	
129	Steps involved in obtaining registration . . . . .	107
<b>Division 3</b>	<b>Applications for registration</b>	
130	Application for registration . . . . .	107
131	Requirement to give chief executive information or material about application . . . . .	108
<b>Division 4</b>	<b>Suitability of applicants</b>	
132	Suitability of applicants. . . . .	108
133	Chief executive must consider suitability of applicants. . . . .	109
134	Investigations about suitability of applicants. . . . .	110
135	Costs of criminal history report. . . . .	111
136	Confidentiality of criminal history . . . . .	112
137	Requirement to give chief executive information or material about suitability. . . . .	112

---

<b>Division 5</b>	<b>Eligibility for registration</b>	
138	Eligibility for registration as property agent salesperson . . . . .	113
<b>Division 6</b>	<b>Issue of registration certificate</b>	
139	Chief executive may issue or refuse to issue registration certificate . . . . .	113
140	Registration certificate—conditions . . . . .	114
<b>Division 7</b>	<b>Renewal and restoration of registration certificates</b>	
<b>Subdivision 1</b>	<b>Renewal</b>	
141	Application for renewal . . . . .	115
142	Chief executive may renew or refuse to renew registration certificate . . . . .	115
143	Registration certificate taken to be in force while application for renewal is considered . . . . .	116
<b>Subdivision 2</b>	<b>Restoration</b>	
144	Application for restoration. . . . .	116
145	Chief executive may restore or refuse to restore registration certificate . . . . .	117
146	Registration certificate taken to be in force while application for restoration is considered . . . . .	118
<b>Division 8</b>	<b>Dealings with registration certificates</b>	
<b>Subdivision 1</b>	<b>Transfer of registration certificate</b>	
147	Transfer of registration certificate prohibited. . . . .	118
<b>Subdivision 2</b>	<b>General</b>	
148	Amendment of registration certificate conditions . . . . .	118
149	Return of registration certificate for amendment of conditions. . .	120
150	Surrender of registration certificate . . . . .	120
<b>Division 9</b>	<b>Immediate suspension and cancellation of registration certificates</b>	
151	Immediate suspension . . . . .	120
152	Immediate cancellation. . . . .	121
<b>Division 10</b>	<b>General provisions about employee registration</b>	
153	Form of registration certificate . . . . .	122
154	Term of registration certificate . . . . .	122
155	Replacement certificates . . . . .	122
156	Register of registration certificates. . . . .	123
157	Property agent salespersons to notify chief executive of changes in circumstances. . . . .	124

Contents

---

<b>Part 6</b>	<b>Residential property sales</b>	
<b>Division 1</b>	<b>Preliminary</b>	
158	Purposes of pt 6 . . . . .	125
159	Definitions for pt 6. . . . .	125
160	Relationship with Electronic Transactions (Queensland) Act . . . .	127
<b>Division 2</b>	<b>Independence of lawyers, disclosure of interests, and particular valuations</b>	
161	Lawyer’s disclosure to buyer about independence. . . . .	128
162	Disclosures to prospective buyer . . . . .	128
163	Buyer to receive copy of property valuation buyer pays for . . . . .	130
<b>Division 3</b>	<b>Warning statements for proposed relevant contracts and relevant contracts</b>	
164	Content and effectiveness of warning statement . . . . .	131
165	Warning statement etc. if proposed relevant contract is given to buyer for signing . . . . .	131
166	Defence for s 165(6). . . . .	133
167	Warning statement must be attached to relevant contract . . . . .	133
<b>Division 4</b>	<b>Waiving and shortening cooling-off periods</b>	
168	Cooling-off period. . . . .	134
169	Waiving cooling-off period . . . . .	135
170	Shortening cooling-off period. . . . .	136
<b>Division 5</b>	<b>Terminating relevant contracts</b>	
171	Buyer may terminate relevant contract in certain circumstance if clear statement is not given under s 165(2)(c)(i) . . . . .	136
172	Terminating relevant contract during cooling-off period . . . . .	137
<b>Division 6</b>	<b>Accounting requirements for relevant contracts</b>	
173	Application of div 6 . . . . .	138
174	Part payments must be paid to particular persons . . . . .	138
175	Part payment to be held in trust . . . . .	139
<b>Division 5</b>	<b>Advertising sale of particular properties—sustainability declarations</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
176	Definitions for div 5. . . . .	140
<b>Subdivision 2</b>	<b>Requirements about advertising sale, and inspection, of residential dwellings</b>	
177	Application of sdiv 2 . . . . .	141
178	Requirements about advertising sale of residential dwelling . . . .	141
179	Requirements about inspection of residential dwelling . . . . .	142



		Contents
180	Requirement to give copy of sustainability declaration. . . . .	143
181	Breach of obligation does not give rise to civil right or remedy . .	143
<b>Subdivision 3</b>	<b>Publishing or giving incomplete or false or misleading sustainability declaration</b>	
182	Application of sdiv 3 . . . . .	143
183	No right to terminate contract for publishing or giving declaration	144
184	Publishing or giving declaration does not contravene particular provisions . . . . .	144
<b>Part 7</b>	<b>Trust accounts</b>	
185	Opening and maintaining trust accounts . . . . .	145
<b>Part 8</b>	<b>Claims against the fund</b>	
<b>Division 1</b>	<b>Preliminary</b>	
186	Definitions for pt 8. . . . .	145
187	What is the purchase of a non-investment residential property . .	146
<b>Division 2</b>	<b>Claims against the fund</b>	
<b>Subdivision 1</b>	<b>Who can claim</b>	
188	Claims . . . . .	146
189	Persons who can not claim. . . . .	148
190	Claims limited to realised loss . . . . .	148
<b>Part 9</b>	<b>Jurisdiction of QCAT</b>	
191	Definitions for pt 9. . . . .	149
192	Jurisdiction . . . . .	149
<b>Part 10</b>	<b>Proceedings</b>	
<b>Division 1</b>	<b>Disciplinary proceedings</b>	
193	Grounds for starting disciplinary proceedings . . . . .	150
194	Starting disciplinary proceedings . . . . .	152
<b>Division 2</b>	<b>Marketeer proceedings</b>	
195	Grounds for starting marketeer proceeding . . . . .	152
196	How to start a proceeding . . . . .	152
<b>Division 3</b>	<b>Review proceedings</b>	
197	Person dissatisfied with chief executive's decision may seek review . . . . .	153
198	Stay of operation of decisions . . . . .	153
199	Tribunal may extend time . . . . .	153
<b>Division 4</b>	<b>Proceedings generally</b>	
<b>Subdivision 1</b>	<b>Reference committee</b>	
200	Reference committee . . . . .	154

Contents

---

201	Reference committee functions . . . . .	154
202	Reference committee may authorise application for public examination . . . . .	155
<b>Subdivision 2</b>	<b>Public examinations</b>	
203	QCAT may conduct public examination . . . . .	155
204	Procedure before public examination starts . . . . .	156
205	Person must answer particular questions. . . . .	156
<b>Subdivision 3</b>	<b>Stopping particular conduct</b>	
206	Stopping particular conduct . . . . .	157
<b>Subdivision 4</b>	<b>QCAT's orders</b>	
207	Orders QCAT may make on disciplinary hearing . . . . .	158
208	Stopping contraventions . . . . .	160
209	Orders QCAT may make in a marketeer proceeding . . . . .	160
210	Criteria for deciding amount to be ordered. . . . .	163
<b>Subdivision 5</b>	<b>Chief executive's right of appeal</b>	
211	Appeal . . . . .	164
<b>Part 11</b>	<b>Injunctions, undertakings, preservation of assets and civil penalties</b>	
<b>Division 1</b>	<b>Injunctions</b>	
212	Injunctions . . . . .	164
213	Who may apply for injunction . . . . .	164
214	Grounds for injunction . . . . .	165
215	Court's powers for injunctions . . . . .	165
216	Terms of injunction . . . . .	166
217	Undertakings as to costs . . . . .	166
<b>Division 2</b>	<b>Undertakings</b>	
218	Chief executive may seek undertaking after contravention . . . . .	166
219	Undertaking about other matter . . . . .	167
220	Variation and withdrawal of undertakings. . . . .	167
221	Enforcement of undertakings . . . . .	168
222	Register of undertakings . . . . .	169
<b>Division 3</b>	<b>Preservation of assets</b>	
223	Powers of court for preservation of assets . . . . .	169
<b>Division 4</b>	<b>Civil penalties and compensation orders for particular contraventions</b>	
224	Application of division 4 . . . . .	172
225	Application for order imposing civil penalties . . . . .	172

---

226	Orders District Court may make . . . . .	172
227	Criteria for deciding amount to be ordered . . . . .	173
<b>Part 12</b>	<b>General contraventions, evidentiary matters and legal proceedings</b>	
<b>Division 1</b>	<b>General contraventions</b>	
228	Wrongful conversion and false accounts . . . . .	174
229	Misleading conduct . . . . .	175
230	Unconscionable conduct . . . . .	175
231	False representations and other misleading conduct in relation to residential property . . . . .	178
232	Application of ss 224, 225 and 226 . . . . .	180
233	Offensive conduct in relation to residential property . . . . .	180
234	False representations about property . . . . .	180
235	Representation of price of property to seller—property agent . . . . .	182
236	Property agent not to indicate reserve or other price to bidder . . . . .	183
237	Representation of price of property—property agent . . . . .	184
238	Property agent not to indicate reserve price to potential buyer . . . . .	185
239	Chief executive’s power to ask for substantiation of representations made by licensees or property agent salespersons . . . . .	186
240	Chief executive to ask for substantiation of representations made by marketeers . . . . .	186
241	Offence to charge fee for providing documents etc. . . . .	187
242	Offence to ask for, or receive, excess or improper remuneration . . . . .	187
243	Offence to lend or borrow licence . . . . .	188
244	False or misleading statements . . . . .	189
245	False or misleading documents . . . . .	189
246	Prohibited practices . . . . .	190
<b>Division 2</b>	<b>Evidentiary matters</b>	
247	Evidentiary provisions . . . . .	191
248	Entries in licensee’s documents . . . . .	191
<b>Division 3</b>	<b>Proceedings</b>	
249	Proceedings for an offence . . . . .	192
250	Responsibility for acts or omissions of representatives . . . . .	193
251	Executive officers must ensure corporation complies with Act . . . . .	194
252	Power of court . . . . .	195
253	Power of court for particular offences . . . . .	196

Contents

---

254	Allegations of false or misleading representations or statements etc. ....	197
<b>Part 13</b>	<b>General</b>	
255	Public warning statements .....	197
256	Civil remedies not affected .....	197
257	Criminal Proceeds Confiscation Act 2002 not limited. ....	198
258	Delegation—chief executive .....	198
259	Approved forms .....	198
260	Review of Act .....	198
261	Regulation-making power .....	198
<b>Part 14</b>	<b>Repeal</b>	
262	Repeal .....	199
<b>Part 15</b>	<b>Transitional provisions</b>	
263	Definitions for pt 15. ....	199
264	Existing licences .....	200
265	Existing registration certificates .....	202
266	Expiry of particular licences and certificate .....	204
267	Existing applications .....	204
268	Restoration of expired existing licences .....	205
269	Restoration of expired registration certificates .....	206
270	Previous refusals of applications .....	207
271	Deactivated existing licences .....	207
272	Suspended existing licences and existing registration certificates	208
273	Existing appointments .....	208
274	Disciplinary action relating to pre-commencement conduct .....	210
275	Marketeer proceeding relating to pre-commencement conduct ..	210
276	Continuation of reviews under the repealed Act .....	211
277	Injunctions relating to pre-commencement conduct .....	211
278	Undertakings relating to pre-commencement conduct .....	212
279	Proceedings for offences under the repealed Act .....	213
280	Existing infringement notice offences .....	214
281	Existing inspectors and delegates .....	214
282	Reference committee—marketeers .....	214
283	Existing registers .....	215
284	Existing fines and fees .....	215
<b>Schedule 1</b>	<b>Decisions subject to review</b> .....	216

<b>Schedule 2</b>	<b>Dictionary .....</b>	<b>217</b>
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**2010**

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**A Bill**

for

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

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[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Property 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, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State, the Commonwealth or any other State liable to be prosecuted for an offence.

#### **4 Exemption—auctions**

- (1) Part 3 does not apply to—
  - (a) a sale made under a rule, order, or judgment of the Supreme Court or District Court; or
  - (b) a sale made by a person obeying an order of, or a process issued by, a court, judge or justice, or the registrar of the State Penalties Enforcement Registry for the recovery of a fine, penalty, or award; or
  - (c) a sale of an animal lawfully impounded and sold under a law about impounding; or

- 
- (d) a sale conducted for a charity, a religious denomination, or an organisation formed for a community purpose, within the meaning of the *Collections Act 1966* (a **relevant entity**) if—
    - (i) the person conducting the sale does not receive from the relevant entity a reward for the person's services; and
    - (ii) amounts received from the sale are paid directly to an officer or employee of the relevant entity who is authorised by the relevant entity to receive and deal with the amounts.

- (2) In this section—

**sale** means a sale, attempted sale or an offering for sale or resale, by way of auction.

## 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 this Act, as a receiver of an entity that is authorised under a licence to perform an activity.
- (2) The person is exempt from the following provisions while performing the activity in relation to any business carried on under the licence in accordance with conditions applying to the licence—
  - (a) section 74;
  - (b) part 3, division 2, subdivision 1;
  - (c) section 112;
  - (d) part 3, division 3;
  - (e) part 4, division 2, subdivision 1;
  - (f) part 4, division 3.



[s 6]

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**6 Exemption—financial institutions and trustee companies**

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

**7 Exemption—non-profit corporations**

- (1) A non-profit corporation is exempt from parts 5 and 6 if—
  - (a) the corporation provides or locates—
    - (i) affordable rental housing under an affordable housing scheme; or
    - (ii) approved supported accommodation; and
  - (b) the providing or locating of the housing or accommodation is funded or managed by the Commonwealth, the State or a local government.
- (2) Subsection (1) does not apply if the non-profit corporation is otherwise carrying on the business of a resident letting agent or property agent.
- (3) To remove any doubt, it is declared that a corporation does not stop being a non-profit corporation only because it receives a reward for providing its services to another non-profit corporation.
- (4) In this section—

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***affordable housing scheme*** see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

***approved supported accommodation*** see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

***non-profit corporation*** means a corporation formed for a purpose other than the purpose of making a profit.

## **Division 2                      Object**

### **8                      Objects of Act**

- (1) The objects of this Act are—
  - (a) to provide a system for licensing and regulating persons as property agents or resident letting agents and for registering and regulating persons as property agent salespersons, that achieves an appropriate balance between—
    - (i) the need to regulate for the protection of consumers; and
    - (ii) the need to promote freedom of enterprise in the market place; and
  - (b) to provide a way of protecting consumers against particular undesirable practices associated with the promotion of residential property.
- (2) The objects are to be achieved 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 property agent's licence maintain close personal supervision of the way the business is carried on; and

[s 8]

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- (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) providing protection for consumers in their dealings with marketeers; and
- (e) establishing a right for persons who suffer financial loss because of their dealings with persons regulated under this Act to apply for compensation from a claim fund; and
- (f) providing for the enforcement of matters involving marketeers by QCAT and the District Court; and
- (g) providing increased flexibility in enforcement measures through codes of conduct, injunctions, undertakings, and, for contraventions by marketeers, preservation of assets and civil penalties; and
- (h) 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 the tribunal; and
  - (iii) responsibility for disciplinary matters rests with the tribunal.

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### Division 3 Interpretation

#### 9 Meaning of *beneficial interest*

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

Case 1

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

*Editor's note—*

'Associate' is a term defined in the dictionary.

Case 2

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

Case 3

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

Case 4

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

Case 5

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

Case 6

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

[s 9]

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Case 7

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

Case 8

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

Case 9

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

Case 10

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

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

Case 1

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

*Editor's note—*

'Associate' is a term defined in the dictionary.

Case 2

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

Case 3

The purchase of the property is made for a corporation (having not more than 100 members) of which the property

agent salesperson or an associate of the employee is a member.

Case 4

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

Case 5

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

Case 6

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

Case 7

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

Case 8

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

Case 9

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

Case 10

The purchase of the property is made for a person carrying on a business for profit or gain and the property agent salesperson or an associate of the employee has, directly or indirectly, a

[s 10]

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right to participate in the income or profits of the person's business or the purchase of the property.

**10 Meaning of *in charge***

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

**11 Meaning of *open listing***

- (1) An *open listing* is a written agreement entered into between a person (*seller*) and a property agent (*selling agent*) under which the seller appoints the selling agent, in accordance with the terms of the agreement, to sell stated property.
- (2) Under the agreement—
  - (a) the seller retains a right—
    - (i) to sell the seller's property during the term of the agreement; or
    - (ii) to appoint additional property agents as selling agents to sell the property on terms similar to those under the agreement; and
  - (b) the appointed selling agent is entitled to remuneration only if he or she is the effective cause of sale; and
  - (c) the appointment of the selling agent can be ended by either the seller or the selling agent at any time.

**12 Meaning of *residential property***

- (1) Property is *residential property* if the property is—

- (a) a single parcel of land on which a place of residence is constructed or being constructed; or
  - (b) a single parcel of vacant land in a residential area.
- (2) Without limiting subsection (1), property is **residential property** if the property is any of the following lots that is a place of residence or in a residential area—
- (a) a lot included in a community titles scheme, or proposed to be included in a community titles scheme, under the *Body Corporate and Community Management Act 1997*;
  - (b) a lot or proposed lot under the *Building Units and Group Titles Act 1980*;
  - (c) a lot shown on a leasehold building units plan registered or to be registered under the *South Bank Corporation Act 1989*.
- (3) Despite subsections (1) and (2), the following property is not **residential property**—
- (a) a single parcel of land on which a place of residence is constructed or being constructed if the property is used substantially for the purposes of industry, commerce or primary production;
  - (b) a single parcel of vacant land, if the property—
    - (i) is in a non-residential area; or
    - (ii) is in a residential area, but only if a local government has approved development in relation to the property, the development is other than for residential purposes and the approval is current; or
    - (iii) is used substantially for the purposes of industry, commerce or primary production.
- (4) In this section—
- development** see the *Sustainable Planning Act 2009*, section 7.

**non-residential area** means an area other than a residential area.



[s 13]

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**planning scheme** see the *Sustainable Planning Act 2009*, section 79.

**residential area** means an area identified on a map in a planning scheme as an area for residential purposes.

**residential purposes** includes rural residential purposes and future residential purposes.

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

### 13 Meaning of *unsolicited invitation*

- (1) An *unsolicited invitation* to a person to attend a property information session includes an invitation—
  - (a) addressed personally to the person and sent to the person’s residential, business, postal or email address; or
  - (b) made by telephoning the person, or by other personal approach to the person.
- (2) An invitation to a person to attend a property information session is not an unsolicited invitation if it is—
  - (a) made at the person’s request, other than in response to an approach of a kind mentioned in subsection (1)(b); or
  - (b) made to the public generally or a section of the public by media advertisement; or
  - (c) addressed nonspecifically and sent to the person’s residential, business, postal or email address.

*Examples of invitations addressed nonspecifically—*

- ‘The owner’
- ‘The householder’

### 14 Difference between *exclusive agency* and *sole agency*

- (1) The only difference between an *exclusive agency* and a *sole agency* is the extent of the entitlement of a selling agent to

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receive an agreed commission or other reward on the sale of particular property.

- (2) Under an **exclusive agency**, a selling agent is entitled, on the sale of particular property and in accordance with the terms of an agreement with the seller of the property, to receive an agreed commission or other reward, whether or not the selling agent is the effective cause of the sale.
- (3) However, if the sale were subject to a **sole agency**, the selling agent would not be entitled to the commission or other reward if the seller were the effective cause of the sale.

*Example—*

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

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

- case 1—R
- case 2—X (another property agent)
- case 3—M (S's mother)
- case 4—S.

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

- (4) In this section—  
**seller**, of property, means the person authorising the sale of the property.  
**selling agent**, of property, means a property agent appointed under a written agreement under this Act by the seller to sell the property.

[s 15]

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## **Part 2                    Licensing**

### **Division 1                Categories of licence**

#### **15            Categories of licence**

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

- (a) property agent's licence (real estate agent and auctioneer);
- (b) resident letting agent's licence.

### **Division 2                Limited property agent's licence**

#### **16            Limited property agent's licence**

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

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### **Division 3                    How to obtain a licence**

#### **17            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 part 2.
- (2) The person must apply for the licence by—
  - (a) giving the chief executive 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 19 and, if the person intends carrying on business under the licence, section 22.
- (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 4                    Applications for licence**

#### **18            Application for licence**

- (1) An applicant for a licence must—
  - (a) apply to the chief executive in the approved form; and
  - (b) state the category of licence being applied for; and
  - (c) state the term of the licence being applied for; and

[s 19]

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

**19 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
    - (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 state in the application the place the applicant intends to be the applicant's principal place of business.
- (3) A place of business or an address under this section must be a place where a document can be served personally.

*Example—*

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

**20 Special provision for applicant for resident letting agent's licence**

- (1) This section applies to an applicant for a resident letting agent's licence for a building complex.
- (2) Before the chief executive may issue the licence, the applicant must satisfy the chief executive that the applicant has prescribed approval.

*Note—*

See section 38(2)(d).

- (3) In this section—

***prescribed approval*** means—

- (a) if the applicant is an individual—body corporate approval for the individual or the person by whom the individual is to be employed to carry on a business of letting lots in the building complex under the authority of a licence; or
- (b) if the applicant is a corporation—body corporate approval for the corporation to carry on a business of

[s 21]

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letting lots in the building complex under the authority of a licence.

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

**22 Applicant intending to carry on business to advise name of auditor**

If the applicant intends carrying on business under a licence and is required under section 185 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
- (b) give the chief executive evidence that the auditor has accepted the appointment as auditor.

*Editor's note—*

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

**Division 5 Suitability of applicants and licensees**

**23 Suitability of applicants and licensees—individuals**

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

**24 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 25 is not a suitable person to hold a licence.
- (2) A corporation that is not a suitable person can not hold a licence.

**25 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;



[s 25]

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- (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 licensee within the meaning of the relevant Act, or an executive officer of a corporation;
- (f) whether, within the previous 5 years, QCAT, the former tribunal or the District Court has made an order under this Act, or the repealed Act, against the person because of the person's involvement as a marketeer of residential property;
- (g) 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; and

*Editor's note—*

See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers).
- (h) for a corporation—
  - (i) whether the corporation has been placed in receivership or liquidation; and

- (ii) whether an executive officer of the corporation has been affected by bankruptcy action; and
  - (iii) whether an executive officer of the corporation has been convicted of an offence against an Agents Act the Administration Act or the repealed Act; and
  - (iv) whether each executive officer of the corporation is a suitable person to hold a licence;
  - (i) 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.

**26 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.

**27 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.

**28 Defence Housing Authority is a suitable person**

The Defence Housing Authority is taken to be a suitable person to hold a licence.

[s 29]

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**29 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.
- (6) In this section—

*applicant* includes a nominated person mentioned in section 53(3) or 54(4).

**30 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 29 about—

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- (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 53(3) or 54(4)—the person nominated by the applicant under section 53(3), 54(4) or 55(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 or licensees 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.
  - (5) In this section—  
*applicant* includes proposed applicant.

**31 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 29.

Maximum penalty—100 penalty units.

[s 32]

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- (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.

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

**Division 6 Eligibility for licence**

**Subdivision 1 Property agent's licence**

**33 Eligibility for property agent's licence**

- (1) An individual is eligible to obtain a property agent's licence only if the individual—
  - (a) is at least 18 years; and

- (b) has the educational or other qualifications for a property agent's 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 property agent's licence is received by the chief executive—
    - (i) has been licensed as a property agent; or
    - (ii) has been the holder of a comparable licence under the repealed Act.
- (3) A corporation is eligible to obtain a property agent's licence only if—
  - (a) a person in charge of the corporation's business is a property agent; and
  - (b) each director of the corporation is a suitable person under part 2 as if the director were an applicant for a licence.

## **Subdivision 2      Resident letting agent's licence**

### **34      Eligibility for resident letting agent's licence**

- (1) An individual is eligible to obtain a resident letting agent's licence for a building complex only if the individual—
  - (a) is at least 18 years; and
  - (b) has the educational or other qualifications for a resident letting agent's licence that may be prescribed under a regulation; and
  - (c) satisfies the chief executive that the individual—

[s 34]

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- (i) resides, or will reside if issued with a licence, in the building complex or, if the individual proposes to perform the activities of a resident letting agent for more than 1 building complex, in 1 of the building complexes; and
  - (ii) has a place, or will have a place if issued with a licence, in the building complex or, if the individual proposes to perform the activities of a resident letting agent for more than 1 building complex, in 1 of the building complexes, that will be the individual's registered office.
- (2) An individual is 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 resident letting agent's licence is received by the chief executive—
    - (i) has been licensed as a resident letting agent or property agent; or
    - (ii) has been the holder of a comparable licence under the repealed Act.
- (3) A corporation is eligible to obtain a resident letting agent licence for a building complex only if—
  - (a) a person in charge of the corporation's business is a resident letting agent; and
  - (b) each director of the corporation is a suitable person under part 2 as if the director were an applicant for a licence; and
  - (c) the corporation satisfies the chief executive that—
    - (i) the corporation has body corporate approval for the corporation to carry on a business of letting lots in the building complex under the authority of a licence; and

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- (ii) the individual who will perform the activities of a resident letting agent for the corporation—
    - (A) is a resident letting agent; and
    - (B) resides, or will reside if the corporation is issued with a licence, in the building complex or, if the individual proposes to perform the activities of a resident letting agent for the corporation for more than 1 building complex, in 1 of the building complexes; and
    - (C) has a place, or will have a place if issued with a licence, in the building complex or, if the individual proposes to perform the activities of a resident letting agent for the corporation for more than 1 building complex, that will be the individual's registered office.
  - (4) An individual who satisfies the chief executive that the individual will be a director of a corporation that is a resident letting agent is not required to comply with subsection (1)(c)(i) if the individual does not intend performing the activities of a resident letting agent for the building complex.

**35 Public trustee is eligible to obtain licence**

The public trustee as a corporation sole is taken to be eligible to obtain a licence.

**36 Chief executive of department is eligible to obtain licence**

The chief executive of a department is taken to be eligible to obtain a licence.

**37 Defence Housing Authority is eligible to obtain licence**

The Defence Housing Authority is taken to be eligible to obtain a licence.



[s 38]

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## **Division 7                      Issue of licences**

### **38            Chief executive may issue or refuse to issue licence**

- (1) The chief executive may issue or refuse to issue a licence to an applicant.
- (2) The chief executive may issue a licence to an applicant only if the chief executive is satisfied that—
  - (a) the applicant is a suitable person and—
    - (i) if the applicant intends carrying on business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant intends carrying on business in conjunction is a suitable person; and
    - (ii) if the applicant is a corporation—each executive officer of the corporation is a suitable person; and
  - (b) the applicant is eligible to obtain a licence of the category of licence being applied for; and
  - (c) the application is properly made; and
  - (d) if the application is for a resident letting agent’s licence for a building complex—the applicant has the prescribed approval under section 20.
- (3) For subsection (2)(c), an application is properly made only if it complies with section 18 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

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- (b) if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed.
  - (6) Subsection (5) does not apply if—
    - (a) the applicant is a corporation; and
    - (b) the applicant satisfies the chief executive that, because of a genuine sale—
      - (i) no person who was a shareholder of, or held a beneficial interest in, the corporation when the refused application was made is a shareholder of, or holds a beneficial interest in, the applicant corporation; and
      - (ii) no person who was in a position to control or influence the affairs of the corporation when the refused application was made is in a position to control or influence the affairs of the applicant corporation.

*Note—*

Section 9 (Meaning of *beneficial interest*) does not define *beneficial interest* for paragraph (b)(i).

**39 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.

[s 40]

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**40 Licence—chief executive of department**

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

**41 Licence—Defence Housing Authority**

- (1) The chief executive may issue a licence to the Defence Housing Authority in the name ‘Defence Housing Authority’.
- (2) A licence issued to the Defence Housing Authority authorises an officer or employee of the authority to perform any activity authorised by the authority that the authority may perform under the licence.
- (3) To remove any doubt, it is declared that an officer or employee performing an activity authorised by the authority is not required to be licensed or registered under this Act to perform the activity.

**42 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 8                      Restrictions on performing activities under licences**

### **43            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 who is 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.

### **44            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.

[s 45]

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*Example—*

E is a licensed employee of P, a property agent. E's licence is not subject to a condition. However, P's licence is subject to a condition that P deal only in business letting. Because of the condition, E is only authorised to deal in business letting 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.

**45 Restriction—conditions**

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

*Note—*

For the consequences if a licensee performing an activity that the licensee is not authorised to perform because of a condition on the licensee's licence, see sections 104 (Acting as property agent) and 116 (Restriction on remedy for reward or expense).

**Division 9 Renewal and restoration of licences**

**Subdivision 1 Renewal**

**46 Application for renewal**

- (1) A licensee must 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

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- (b) state the term of the licence being applied for; and
  - (c) state the names and addresses of the licensee's business associates; and
  - (d) be accompanied by—
    - (i) an application fee prescribed under a regulation; and
    - (ii) a licence renewal fee prescribed under a regulation; and
    - (iii) if the licensee is required as a condition of the licensee's licence to hold insurance, proof of the currency of the insurance; and
    - (iv) if, before or when the application is made, a criminal history costs requirement is made of the licensee—the amount of the costs required to be paid.
  - (3) The application must also be accompanied by—
    - (a) an audit report for all trust accounts kept by the licensee during the relevant audit period; or
    - (b) a statutory declaration that the licensee did not operate a trust account during the relevant audit period.
  - (4) The licensee must also satisfy the chief executive that the licensee has actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation.

**47 Chief executive may renew or refuse to renew licence**

- (1) The chief executive must consider the renewal application and may renew or refuse to renew the licence.
- (2) The chief executive may renew the licence only if the chief executive is satisfied—
  - (a) the licensee is a suitable person and—
    - (i) if the licensee carries on business in partnership or in conjunction with others—each member of the

[s 48]

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- 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, licensee in charge of a corporation's business 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 46 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.

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

If an application is made under section 46, 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 47; or
- (b) withdrawn by the licensee; or
- (c) taken to have been withdrawn under section 32(3).

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## Subdivision 2      Restoration

### 49      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.



[s 50]

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

**50 Chief executive may restore or refuse to restore licence**

- (1) The chief executive must consider the restoration application and may restore or refuse to restore the licence.
- (2) The chief executive may restore the licence only if the chief executive is satisfied—
  - (a) the licensee is a suitable person and—
    - (i) if the licensee carries on, or intends to carry on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the licensee carries on business in conjunction is a suitable person; and
    - (ii) if the licensee is a corporation—each executive officer of the corporation is a suitable person; and
  - (b) the application is properly made; and
  - (c) the licensee has, as a principal licensee or employed licensee, actively carried out the activities authorised under the licence for a period, and within the period, prescribed under a regulation; and
  - (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 49 and is accompanied by the things mentioned in that section.
- (4) If the chief executive decides to refuse the application, the chief executive must give the licensee an information notice within 14 days after the decision is made.

- (5) If the chief executive restores the licence—
- (a) the licence is taken to have been renewed on the day it would, apart from section 51, 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.

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

If an application is made under section 49, 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 50; or
- (b) withdrawn by the licensee; or
- (c) taken to have been withdrawn under section 32(3).

**Division 10 Dealings with licences**

**Subdivision 1 Transfer of licence**

**52 Transfer of licence prohibited**

A licence may not be transferred.

[s 53]

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## Subdivision 2      Substitute licences

### 53      **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.

**54 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

[s 54]

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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.

**55 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 53(3) or 54(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 part 2, 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 must give the licensee an information notice within 14 days after the decision is made.

[s 56]

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**56 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 53(1) or 54(2)—to the substitute licensee; or
    - (ii) for a substitute licensee appointed under section 67—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 64(1) or 65(2)—to the principal licensee making the appointment; or
    - (ii) for a substitute licensee appointed under section 55—to the chief executive and the principal licensee who applied for the appointment; or
  - (d) the chief executive revokes the substitute licensee's appointment; or
  - (e) the licensee's licence is suspended or cancelled; or
  - (f) if the licensee is a principal licensee, the licensee stops carrying on business as a licensee.

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**57 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**

**58 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 207 (Orders QCAT may make on disciplinary hearing).

- (2) An application under subsection (1)(a) must be made in the approved form and be accompanied by the application fee prescribed under a regulation.
- (3) Before making an amendment under subsection (1)(a), the chief executive must be satisfied the licensee meets the eligibility requirements the chief executive specifies as relevant to the amendment of the condition.
- (4) Before making an amendment under subsection (1)(c), the chief executive must—
  - (a) give written notice to the licensee—
    - (i) of the particulars of the proposed amendment; and



[s 59]

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

**59 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 58, 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.

**60 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.

**61 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.
- (6) The holder of a deactivated licence may apply to have the licence renewed under section 46 or restored under section 49 as a deactivated licence at a reduced fee prescribed under a regulation.
- (7) A licensee may ask the chief executive to reactivate the licence.



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- (ii) is likely or proposing to engage in conduct that would contravene this 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)(b), suspend a licence held by an employee of the licensee if the chief executive considers, on reasonable grounds, the employee is responsible in any way for the irregularity or deficiency in the licensee’s trust account.
  - (3) If the chief executive suspends a licence for a reason mentioned in subsection (1)(b), (d) or (e), 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)(c), the licence is suspended until whichever of the following happens first—
    - (a) the licensee files the required audit report;
    - (b) an application to QCAT for the cancellation of the licence is heard and decided.
  - (5) The chief executive must give the licensee an information notice in relation to the suspension within 14 days after suspending the licensee’s licence.
  - (6) The licensee must return the licence to the chief executive within 14 days after the licensee receives the notice, unless the person has a reasonable excuse.

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

**63 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;

[s 64]

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- (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 12            General provisions about licences**

### **64        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.

*Example—*

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.

- (3) The chief executive may also issue a form of licence for a corporation endorsed with the categories of licence issued in the corporation's name.
- (4) The licence must contain the following particulars—
  - (a) the name of the licensee;
  - (b) the date of issue of the licence;
  - (c) the expiry date of the licence;
  - (d) other particulars that may be prescribed under a regulation.

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**65 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.

**66 Term of licence**

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

**67 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 or destroyed, or damaged in a way that would 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.

**68 Register of licences**

- (1) The chief executive must keep a register of licences and applications for licences (*licence register*).
- (2) The licence register must contain the following particulars—
  - (a) for each applicant for a licence—
    - (i) the applicant's name; and
    - (ii) if the applicant intends to carry on business under the licence, the place where the applicant intends to carry on business; and
    - (iii) the category of licence applied for; and

[s 68]

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- (iv) the date of the application; and
    - (v) the application number;
  - (b) for each licensee—
    - (i) the licensee's name; and
    - (ii) the licensee's registered office; and
    - (iii) the category of the licensee's licence; and
    - (iv) the dates of issue and expiry of the licensee's current licence; and
    - (v) any conditions imposed on the licence; and
    - (vi) if the licensee is a corporation, the name of the individual in charge of the licensee's business at the licensee's registered office; and
    - (vii) if the licensee is a director of a licensed corporation, the name of the licensed corporation; and
    - (viii) if the licensee is an employee of another licensee, the name of the licensee's employer; and
    - (ix) the licensee's licence number; and
    - (x) particulars of any surrender, suspension, cancellation or revocation of the licensee's licence.
- (3) A person may, on payment of any fee that may be prescribed under a regulation, inspect, or get a copy of details in, the part of the register containing the particulars mentioned in subsection (2)—
  - (a) at a place or places decided by the chief executive; or
  - (b) by using a computer.
- (4) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.
- (5) The register may be kept in any way the chief executive considers appropriate.

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- (6) In this section—  
*contain* includes record and store.

**69 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 Property agents**

**Division 1 Property agent's authorisation and responsibility**

**Subdivision 1 Property agent's licence**

**70 What a property agent's licence authorises**

- (1) A property agent's licence authorises the holder of the licence (*property agent*) to perform the following activities as an agent for others for reward—
- (a) to buy, sell, exchange, or let places of residence or land or interests in places of residence or land;



[s 71]

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- (b) to buy, sell, exchange, or let businesses or interests in businesses;
  - (c) to sell, or attempt to sell or offer for sale or resale, something mentioned in paragraph (a) or (b) by way of auction;
  - (d) to negotiate for the buying, selling, exchanging, or letting of something mentioned in paragraph (a) or (b);
  - (e) to collect rents.
- (2) A property agent may perform the activities in the carrying on of a business, either alone or with others, or as an employee of someone else.

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

**71            Responsibility for acts and omissions of salespersons**

- (1) A property agent who is a principal licensee must take reasonable steps to ensure each property agent salesperson employed by the agent is properly supervised and complies with this Act.
- (2) A property agent who is an employed licensee in charge of a licensee's business at a place of business must take reasonable steps to ensure each property agent salesperson employed at the place is properly supervised and complies with this Act.
- (3) A property agent who fails to comply with subsection (1) or (2) is liable to disciplinary action under part 10, division 1.

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**Division 2                    Conduct provisions**

**Subdivision 1            Carrying on business**

**72            Carrying on of business under property agent's licence**

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

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

**73            Licensee to be in charge of a property agent's business at a place**

- (1) A property 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 property agent has more than 1 place of business, ensure that at each other place of business—
    - (i) that is a resident letting agency—a property agent, or resident letting agent, who is an individual, is in charge of the property agent's business at the place of business; or
    - (ii) that is not a resident letting agency—a property agent who is an individual is in charge of the property agent's business at the place of business.

Maximum penalty—200 penalty units.

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

[s 73]

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- (a) the individual in charge of the corporate agent's business at its registered office is a property agent; and
- (b) if the corporate agent has more than 1 place of business, ensure that at each other place of business—
  - (i) that is a resident letting agency—a property agent, or resident letting agent, who is an individual is in charge of the corporate agent's business at the place of business; or
  - (ii) that is not a resident letting agency—a property agent who is an individual is in charge of the corporate agent's business at the place of business.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 251—200 penalty units; or
  - (b) for a corporation—1000 penalty units.
- (3) An individual must not be in charge of a property agent's business at more than 1 place.

Maximum penalty—200 penalty units.

- (4) It is not an offence against subsection (1) or (2) for a property agent who is an individual to be in charge of more than 1 place of business if each place of business is on land contiguous to land on which the other place of business is located.
- (5) For subsection (4), land is *contiguous* with other land only if the parcels of land have a common boundary that is not separated by a public road.
- (6) In this section—

*resident letting agency* means a place of business at which the only business carried on as a property agent is the business of a resident letting agent.

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## Subdivision 2 Appointment

### 74 Appointment of property agent—general

- (1) A property agent must not act as a property agent for a person (*client*) to perform an activity (*service*) for the client unless—
  - (a) the client first appoints the property agent in writing; or
  - (b) a previous appointment by the client is assigned to the property agent under the terms of that appointment or under section 78 and the appointment is in force.

Maximum penalty—200 penalty units.

- (2) The appointment may be for the performance of—
  - (a) a particular service (*single appointment*); or
  - (b) a number of services over a period (*continuing appointment*).
- (3) The appointment must, for each service—
  - (a) state the service to be performed by the property agent and how it is to be performed; and
  - (b) if the service is an auction—state the day set for the auction; and
  - (c) state, in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to any amount that may be prescribed under a regulation; and
  - (d) state—
    - (i) the fees, charges and any commission payable for the service; and
    - (ii) the expenses, including advertising and marketing expenses, the agent is authorised to incur in connection with 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

[s 74]

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the agent may receive in relation to any expenses that the agent may incur in connection with the performance of the service; and

- (iv) any condition, limitation or restriction on the performance of the service; and
- (e) state when the fees, charges and any commission for the service become payable; and
- (f) if the service to be performed is the sale or letting of property or the collecting of rents and commission is payable in relation to the service and expressed as a percentage of an estimated sale price or amount to be collected, state that the commission is worked out only on the actual sale price or the amount actually collected; and
- (g) if the appointment is for a sole or exclusive agency, state the date the appointment ends.

*Note—*

For additional requirements for an appointment for a sole or exclusive agency, see section 77.

- (4) A continuing appointment must state—
  - (a) the date the appointment ends; and
  - (b) that the appointment, other than to the extent it relates to the sale of land or interests in land, 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 revocation of a continuing appointment does not affect existing contracts entered into by the property agent on behalf of the client.
- (7) The appointment must be signed and dated by the client and the property agent or someone authorised or apparently authorised to sign for the agent.

- (8) The property agent must give a copy of the signed appointment to the client.

Maximum penalty—200 penalty units.

**75 Form of appointment**

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

**76 Pre-appointment advice about types of appointment**

If the appointment is for the sale of a place of residence or land or an interest in a place of residence or land, before the appointment is signed, the property agent must specifically bring to the client's notice the information in the form of appointment about—

- (a) the effect of the following—
- (i) an open listing;
  - (ii) an exclusive agency;
  - (iii) a sole agency; and
- (b) the difference between sole agency and exclusive agency.

Maximum penalty—200 penalty units.

*Note—*

The commission of an offence against this section also renders the appointment ineffective under section 81(3).

[s 77]

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**77 Appointment of property agent—sole and exclusive agencies**

- (1) If the appointment is for a sole or exclusive agency, before the appointment is signed, the property agent must discuss with the client whether the appointment is to be for a sole agency or an exclusive agency and specifically bring to the client's notice the information in the form of appointment about—
  - (a) the proposed term of the appointment; and
  - (b) if the appointment is for the sale of residential property, the client's entitlement to negotiate the term of the appointment up to a maximum term of 60 days; and
  - (c) the difference between sole agency and exclusive agency, unless the information has been brought to the client's notice under section 76; and
  - (d) the consequences for the client if the property is sold by someone other than the agent during the term of the appointment.

Maximum penalty—200 penalty units.

*Note—*

The commission of an offence against this subsection also renders an appointment for the sale of a place of residence or land or an interest in a place of residence or land ineffective under section 81(3).

- (2) The appointment may include provision that, at the end of the term of a sole or exclusive agency, the appointment of the agent continues under an open listing that may be ended at any time by the agent or the client.
- (3) Subsection (1)(b) does not apply if the appointment—
  - (a) is for the sale of 3 or more resident properties; or
  - (b) is for the sale of a lot in a community titles scheme as part of the sale of management rights to the person who is to become the letting agent for the community titles scheme.
- (4) In this section—

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*community titles scheme* has the meaning given by the *Body Corporate and Community Management Act 1997*, section 10.

*letting agent* has the meaning given by the *Body Corporate and Community Management Act 1997*, section 16.

*management rights* has the meaning given by the *Body Corporate and Community Management Act 1997*, schedule 6.

## **78 Proposal for assignment of appointments**

- (1) This section applies if a property agent who holds appointments from clients to perform services for the clients under section 74 proposes to assign the appointments to another property 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 property agent assigns the appointments, the 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) 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 a client agrees to the assignment and the property agent assigns the appointment under this section, the appointment is taken, for section 74, to be an appointment by the client of the



[s 79]

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proposed assignee and to continue to have effect according to its terms.

**79 Restriction on reappointment of property agents for sales of residential property**

- (1) A property agent may be reappointed for a sole or exclusive agency for the sale of residential property for 1 or more terms of not more than 60 days.
- (2) The limitation on the term of reappointment under subsection (1) does not apply if the reappointment is for the sale of 3 or more residential properties.
- (3) A property agent appointed for the sale of residential property under a sole or exclusive agency commits an offence if the agent is reappointed for the sale earlier than 14 days before the term of the sole or exclusive agency ends.

Maximum penalty—200 penalty units.

*Note—*

The commission of an offence against this subsection in relation to the reappointment also renders the reappointment ineffective under section 74.

**80 Form of reappointment**

- (1) The reappointment of a property agent under section 79 must be made in the approved form.
- (2) A reappointment that does not comply with subsection (1) is ineffective from the time it is made.

**81 When appointments and reappointments are ineffective**

- (1) The appointment of a property agent for the sale of residential property under a sole or exclusive agency is ineffective from the time it is made if the term of the appointment is more than 60 days.
- (2) Subsection (1) does not apply if the appointment is for the sale of 3 or more residential properties.

- (3) The appointment of a property agent for the sale of a place of residence or land or an interest in a place of residence or land is ineffective from the time it is made if the property agent commits an offence against section 76 or 77(1).
- (4) The reappointment of a property agent for a further term of sole or exclusive agency for the sale of residential property is ineffective from the time it is made if the property agent commits an offence against section 79(3) in relation to the reappointment.

### **Subdivision 3 Disclosure of interest**

#### **82 Disclosures to prospective buyer**

- (1) A residential property agent for the sale of residential property must disclose the following to any prospective buyer of the property—
  - (a) any relationship, and the nature of the relationship (whether personal or commercial), the agent has with anyone to whom the agent refers the buyer for professional services associated with the sale;  
*Examples of relationships for paragraph (a)—*
    - a family relationship
    - a business relationship, other than a casual business relationship
    - a fiduciary relationship
    - a relationship in which 1 person is accustomed, or obliged, to act in accordance with the directions, instructions, or wishes of the other
  - (b) whether the agent derives or expects to derive any benefit from a person to whom the agent has referred the buyer and, if so, the amount or value of the benefit;
  - (c) the amount, value or nature of any benefit any person has received, receives, or expects to receive in connection with the sale, or for promoting the sale, or

[s 82]

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for providing a service in connection with the sale, of the property.

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

- finance broker
- financial adviser
- financier
- property valuer
- residential property agent
- seller
- solicitor

Maximum penalty—200 penalty units.

- (2) The disclosure is effective for subsection (1) only if it is—
- (a) given to the prospective buyer in the approved form; and
  - (b) acknowledged by the prospective buyer in writing on the approved form; and
  - (c) given and acknowledged before a contract for the sale of the residential property is entered into.
- (3) Also, for subsection (1)(c), disclosure in compliance with the approved form is sufficient.
- (4) In this section—

***benefit*** means monetary or other benefit.

***residential property agent*** means—

- (a) a property agent; or
- (b) a property agent salesperson acting for the property agent; or
- (c) a person acting as a property agent in contravention of section 104(2); or
- (d) a person acting as a property agent salesperson in contravention of section 105(1).

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#### **Subdivision 4      Recovery of reward or expense**

##### **83      Commission may be claimed only in relation to actual amounts**

- (1) This section applies to a property agent who performs, for the payment of a commission, a service of selling or letting property or collecting rents.
- (2) The property agent must not claim commission worked out on an amount more than the actual sale price of the property or the amount collected.

Maximum penalty—200 penalty units.

##### **84      Restriction on recovery of reward or expense—no proper authorisation etc.**

- (1) A person is not entitled to sue for, or recover or retain, a reward or expense for the performance of an activity as a property agent unless, at the time the activity was performed, the person—
  - (a) held a property agent's licence; and
  - (b) was authorised under the person's licence to perform the activity; and
  - (c) had been properly appointed under division 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 property agent other than as provided by subsection (1) commits an offence.

Maximum penalty—200 penalty units.

##### **85      Restriction on recovery of reward or expense above amount allowed**

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

[s 86]

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that is more than the amount of the reward stated in the appointment given under section 74.

- (2) However, if the reward for the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or retain, a reward more than the amount allowed under the regulation.
- (3) A person is not entitled to sue for, or recover or retain, expenses for the performance of an activity as a property agent that are more than the amount of the expenses stated in the appointment given under section 74 and actually expended.
- (4) However, if the amount of expenses that may be incurred in relation to the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or retain, an amount more than the amount allowed under the regulation.
- (5) Subsection (2) does not prevent the person suing for, recovering or retaining, in addition to the amount allowed under a regulation for the reward, an amount for GST payable for a supply.
- (6) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a property agent other than as provided by this section commits an offence.

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

**86 Excess commission etc. to be repaid**

- (1) This section applies if—
  - (a) a person is convicted of an offence against section 83(2), 84(2) or 85(6); and
  - (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an activity an amount to which the person was not entitled.

[s 87]

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

## **Subdivision 5      Interests in property**

### **87      Definition for sdiv 5**

In this subdivision—

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

### **88      Beneficial interest—options**

- (1) This section applies to property placed by a person (*client*) with a property agent for sale.
- (2) The property agent commits an offence if the agent obtains from the client an option to purchase the property in which the agent has a beneficial interest.  

Maximum penalty—200 penalty units or 3 years imprisonment.
- (3) A property agent salesperson employed by the property agent commits an offence if the salesperson obtains from the client an option to purchase the property in which the salesperson has a beneficial interest.  

Maximum penalty—200 penalty units or 3 years imprisonment.
- (4) The property agent must not sell the property if the agent obtains a beneficial interest in an option to purchase the property.

[s 89]

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Maximum penalty—200 penalty units or 3 years imprisonment.

**89 Beneficial interest—other than options**

(1) This section applies to property placed by a person (*client*) with a property agent for sale, but does not apply if section 88 applies.

(2) The property agent commits an offence if the agent obtains a beneficial interest in the property.

Maximum penalty—200 penalty units or 3 years imprisonment.

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

Maximum penalty—200 penalty units or 3 years imprisonment.

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

(a) the person—

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

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

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

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

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

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

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**90 Return of beneficial interest if in form of commission**

- (1) This section applies if—
  - (a) a person is convicted of an offence against section 89(2) or (3); and
  - (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an activity an amount of commission to which the person was not entitled.
- (2) The court must order the person to pay the amount to the client.
- (3) The order must be made whether or not any penalty is imposed on the conviction.
- (4) The client may file the order in a court having jurisdiction for the recovery of a debt of an equal amount and the order may be enforced as if it were a judgment of that court.

**Subdivision 6 Lands not lawfully useable for residential purposes**

**91 Definition for sdiv 6**

In this subdivision—

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

**92 Application of sdiv 6**

This subdivision applies to a sale or proposed sale of vacant land if—

- (a) the sale is by a property agent either as agent for another or as principal; and
- (b) the land is within—



[s 93]

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- (i) the City of Brisbane area; or
- (ii) a local government area or joint local government area under the *Local Government Act 2009*; and
- (c) the land can not, as at the day of sale, be lawfully used for residential purposes.

**93 Notice to be given about vacant land**

- (1) The property agent must give to a proposed buyer a written statement under this section.

Maximum penalty—200 penalty units or 2 years imprisonment.

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

Maximum penalty—200 penalty units or 2 years imprisonment.

- (3) The statement must include the following particulars—

- (a) the land, clearly identified (including by lot-on-plan, or similar, description), to which the statement relates;
- (b) the names and addresses of the seller of the land and the proposed buyer;
- (c) a clear statement that the use of the land for residential purposes is unlawful;
- (d) a clear statement that if the buyer erects on the land a place of residence or otherwise uses the land for residential purposes contrary to law—
  - (i) the buyer may commit an offence; and
  - (ii) a named local government may be lawfully empowered to demolish the place of residence or other residential structure;
- (e) the date on which the statement is given.

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- (4) The statement must be signed and dated by the property agent and the proposed buyer.
  - (5) The property agent must—
    - (a) keep a copy of the signed statement at the property agent's registered office; and
    - (b) make it available for immediate inspection by an inspector who asks to see it.

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

**94 Buyer's rights if notice not given or materially defective**

- (1) A buyer of land, by written notice (*avoidance notice*) given to the seller of the land or the property agent, may avoid a contract for the sale of the land if—
  - (a) the buyer has not been given the notice under section 93; or
  - (b) the notice has been given to the buyer, but the notice is defective in a material way.
- (2) The avoidance notice must be given to the seller or property agent within 6 months after the day the buyer entered into the contract.
- (3) If the contract is avoided by the buyer under subsection (1), the seller and the property agent are liable at law to the buyer for all amounts paid by the buyer—
  - (a) under the contract; and
  - (b) for legal and other expenses in relation to the contract after the contract was signed.
- (4) A property agent who is liable at law under subsection (3) for the repayment to the buyer of an amount paid by the buyer under, or in relation to, the contract must repay the amount within 14 days after becoming liable.

Maximum penalty—200 penalty units.

[s 95]

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- (5) The buyer may recover an amount mentioned in subsection (3) as a debt.
- (6) Judgment recovered against either person liable under subsection (3) for an amount repayable under that subsection does not bar an action against the other person.
- (7) However, if separate actions are brought—
  - (a) the amounts recoverable under the judgments given in the actions must not be more, taken together, than the amount repayable to the buyer; and
  - (b) in the later of the 2 actions, the plaintiff is not entitled to costs, unless the court decides there were reasonable grounds for bringing the action.
- (8) If the buyer avoids the contract under this section after the contract is completed, the buyer must, after repayment of all amounts recoverable by the buyer under subsection (3)—
  - (a) sign the documents presented to the buyer necessary to convey title to the land to the person lawfully entitled to the land or the person’s nominee; and
  - (b) deliver to the person lawfully entitled to the land or the person’s nominee any instrument of title in the buyer’s possession or under the buyer’s control.
- (9) The buyer—
  - (a) is not liable for any costs associated with a conveyance under subsection (8); and
  - (b) may recover from the seller and the property agent as a debt the buyer’s reasonable costs associated with the conveyance.
- (10) The liability of the seller and the property agent under subsections (3) and (9) is joint and several.

**95 Liability to punishment under s 149 or 150 additional to other liabilities at law**

Liability to punishment under section 93 or 94 is in addition to other liabilities at law imposed under section 94.

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## **Subdivision 7 Sales of particular businesses**

### **96 Application of sdiv 7**

This subdivision applies to the sale of a business for which a resident letting agent's licence is required (*resident letting agent's business*).

### **97 Notice to be given about sale of resident letting agent's business**

- (1) A property agent who is authorised to sell a resident letting agent's business by the seller of the business must give to a proposed buyer of the business a written statement under this section.

Maximum penalty—200 penalty units.

- (2) The property agent must give the statement to the proposed buyer before the buyer signs any contract in relation to the sale.
- (3) The statement must include the following particulars—
- (a) the business, clearly identified, to which the statement relates;
  - (b) the names and addresses of the seller of the business and the proposed buyer;
  - (c) a clear statement that, to carry on the business, the proposed buyer must have the approval of the body corporate of the building complex in which the activities of a resident letting agent are to be performed;
  - (d) a clear statement that a person who performs the activities of a resident letting agent must—
    - (i) hold a resident letting agent's licence under this Act; or
    - (ii) otherwise be permitted under this or another Act to perform the activities;
  - (e) the date on which the statement is given.

[s 98]

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- (4) The statement must be signed and dated by the property agent.
- (5) Also, when giving the statement to the proposed buyer, the property agent must ask the proposed buyer to acknowledge that the proposed buyer has read the statement by signing and dating it.
- (6) The property agent must keep a copy of the signed statement at the property agent's registered office and make it available for the immediate inspection of an inspector who asks to see it.

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

## **Subdivision 8 Code of conduct**

### **98 Code of conduct**

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

- (a) setting conduct standards for property agents, employed licensees and property agent salespersons;
- (b) establishing principles for fair trading;
- (c) providing for a system of complaint resolution;
- (d) providing that contraventions of some provisions of the code are an offence.

### **99 Code of conduct complaints and action chief executive may take**

- (1) A person aggrieved by the conduct of a property agent or property agent salesperson may complain in writing to the chief executive about the conduct.
- (2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action about 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 193 (Grounds for starting disciplinary proceedings).

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

**Division 3                      General**

**100      Registered office**

A property agent's *registered office* is—

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

**101      Property agent must notify chief executive of change in place of business etc.**

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

[s 102]

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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 property 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.

## **102 Display and publication of licensee's name**

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

Maximum penalty—100 penalty units.

- (2) A property agent who is a principal licensee must not publish, or permit to be published, 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.

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

Maximum penalty—100 penalty units.

**103 Principal licensee must keep employment register**

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

Maximum penalty—200 penalty units.

- (2) The property 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 an employed licensee, or property agent salesperson at the place; and
  - (b) if the employee is a property agent salesperson, the activities the salesperson is authorised to perform for the agent during the employee's employment by the agent.

Maximum penalty—200 penalty units.

- (3) The property agent must—
- (a) enter the particulars about each employee, and for each property agent salesperson, the activities the salesperson is authorised to perform, immediately after the employee is employed at the place; and
  - (b) if there is a change in an employee's particulars or activities, correct the entry in the way prescribed under a regulation immediately after the change.

Maximum penalty—200 penalty units.

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



[s 104]

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## **Division 4                      Offences**

### **104    Acting as property 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 property agent's licence unless the person—
- (a) holds a property agent's 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 property agent unless—
- (a) the person holds a property agent's 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 property agent, a person acts as a property agent if the person—
- (a) performs an activity mentioned in section 70(1); or
  - (b) advertises or notifies or states that the person—
    - (i) performs an activity mentioned in section 70(1); or
    - (ii) is willing to perform an activity mentioned in section 70(1); or
  - (c) in any way holds out as being ready to perform an activity mentioned in section 70(1).

- (4) However—
- (a) a person does not act as a property agent only because the person, while performing duties as an employee of a

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property agent at the property agent's registered office or other place of business—

- (i) collects, and issues receipts for, rents; or
  - (ii) gives a person a list, prepared by or for the property agent, of premises available for rent; or
  - (iii) does something of an administrative nature in relation to a thing the property agent does as a property agent; and
- (b) a person does not act as a property agent only because the person collects rents for the provider of rooming accommodation, as an employee of the provider, if the rents are collected in the course of providing rooming accommodation; and
  - (c) a lawyer does not act as a property agent only because the lawyer collects rents in the lawyer's practice if the lawyer complies with the requirements of the *Legal Profession Act 2007* in relation to the rents; and
  - (d) a person does not act as a property agent only because the person sells, or negotiates the sale of, a manufactured home under an authority given to the person under the *Manufactured Homes (Residential Parks) Act 2003*, section 60.

**105 Pretending to be property agent salesperson**

- (1) A person must not act as a real estate salesperson unless the person holds a registration certificate (real estate salesperson).  
Maximum penalty—200 penalty units.
- (2) A person does not act as a property agent salesperson only because the person, while performing duties as an employee of a property agent at the property agent's registered office or other place of business—
  - (a) collects, and issues receipts for, rents; or
  - (b) gives a person a list, prepared by or for the property agent, of premises available for rent; or

[s 106]

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(c) does something of an administrative nature in relation to a thing the property agent does as a property agent.

(3) In this section—

*act as a property agent salesperson*, for a person, includes hold out that the person is a property agent salesperson.

**106 Property agent must not act for more than 1 party**

(1) A property agent must not act for more than 1 party to a transaction.

Maximum penalty—200 penalty units.

(2) If a property agent acts for more than 1 party to a transaction, an appointment to act for a party to the transaction is ineffective from the time it is made.

(3) Also, if the transaction is an exchange of property, a property agent does not contravene subsection (1) and subsection (2) does not apply to the extent that the agent acts for each of the parties to the transaction.

**107 Production of licence or registration certificate**

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

Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

**108 Employment of persons in real estate business**

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

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Maximum penalty—200 penalty units.

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

Maximum penalty—200 penalty units.

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

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 251—200 penalty units; or
- (b) for a corporation—1000 penalty units.

## **Part 4 Resident letting agents**

### **Division 1 Resident letting agent's licence**

#### **109 What a resident letting agent's licence authorises**

- (1) A resident letting agent's licence authorises the holder of the licence (*resident letting agent*) to perform the following activities as an agent for others for reward—
- (a) letting lots in a building complex;
- (b) collecting rents for lots in a building complex.
- (2) A resident letting agent may perform the activities in the carrying on of a business, either alone or with others, or as an employee of someone else.

[s 109]

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- (3) The chief executive must, by condition of the licence, limit the performance of the activities by the resident letting agent to 1 or more stated building complexes.
- (4) The chief executive may authorise the resident letting agent to perform the activities in more than 1 building complex if—
  - (a) the chief executive is satisfied—
    - (i) each building complex is on land contiguous to land on which another building complex in relation to which the letting agent is, or is to be, authorised to perform the activities is situated; and
    - (ii) the resident letting agent has the approval of each appropriate body corporate to carry on a business of letting lots, and collecting rent for lots, in the complex; or
  - (b) both of the following apply—
    - (i) immediately before the commencement of section 607 of the repealed Act, a person held a resident property agent's licence or corporation licence (with a director holding a resident property agent's licence) in relation to all the building complexes;
    - (ii) since the commencement, a person has been authorised under a licence to perform the activities of a resident letting agent for 1 or more of the building complexes.
- (5) For subsection (4)(a)(i), land is *contiguous* with other land only if the parcels of land have a common boundary that is not separated by a public road.

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**Division 2                      Conduct provisions**

**Subdivision 1                Carrying on business**

**110      Carrying on of business under resident letting agent's licence**

- (1) An individual who carries on the business of a resident letting agent with others is not required to hold a resident letting agent's licence or property agent's licence if—
  - (a) at least 1 of the persons with whom the individual carries on business is a resident letting agent or property agent; and
  - (b) the individual does not perform the activities of a resident letting agent; and
  - (c) the individual is a suitable person to hold a licence.
- (2) A resident letting agent who is an individual must reside permanently in the building complex or, if the letting agent is authorised to perform activities in relation to more than 1 building complex, 1 of the building complexes for which the letting agent is authorised to perform activities.

Maximum penalty—200 penalty units.

- (3) A resident letting agent that is a corporation must ensure that an individual who performs the activities of a resident letting agent for the corporation resides permanently in the building complex or, if the letting agent is authorised to perform activities for more than 1 building complex, 1 of the building complexes for which the letting agent is authorised to perform activities.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 251—200 penalty units; or
- (b) for a corporation—1000 penalty units.

[s 111]

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

**111 Licensee to be in charge of a resident letting agent's business at a place**

- (1) A resident letting agent who is an individual and a principal licensee must be in charge of the agent's business at the agent's registered office.

Maximum penalty—200 penalty units.

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

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 251—200 penalty units; or
  - (b) for a corporation—1000 penalty units.
- (3) If a resident letting agent who is a principal licensee—
    - (a) is authorised under the letting agent's licence to carry on a business of letting lots in more than 1 building complex; and

(b) has a place of business in each building complex;

the resident letting agent must ensure that another individual who is a resident letting agent or property agent is in charge of the agent's business at the other place.

Maximum penalty—200 penalty units.

- (4) An individual must not be in charge of a resident letting agent's business at more than 1 place of business.

Maximum penalty—200 penalty units.

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## Subdivision 2 Appointment

### 112 Appointment of resident letting agent

- (1) A resident letting agent must not act as a resident letting agent for a person (the *client*) to perform an activity (*service*) for the client unless—
  - (a) the client first appoints the letting agent in writing under this section; or
  - (b) a previous appointment by the client is assigned to the letting agent under the terms of that appointment or under section 114 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 letting agent and how it is to be performed; and
  - (b) state—
    - (i) in the way prescribed under a regulation, that fees, charges and commission payable for the service are negotiable up to any amount that may be prescribed under a regulation; and
    - (ii) for a single appointment, if commission is payable and expressed as a percentage of rent, the amount of commission expressed in dollars based on the listed rental charge; and
  - (c) state—
    - (i) the fees, charges and commission payable for the service; and



[s 112]

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- (ii) the expenses, including advertising and marketing expenses, the letting agent is authorised to incur in connection with the performance of the service; and
  - (iii) the source and the estimated amount of any rebate, discount, commission or benefit that the letting agent may receive in relation to any expenses that the letting agent may incur in connection with the performance of the service; and
  - (iv) any condition, limitation or restriction on the performance of the service; and
  - (d) state when the fees, charges and commission for the service become payable; and
  - (e) if a service to be performed is the letting of lots or the collecting of rent and commission is payable in relation to the service and expressed as a percentage, state that the commission is worked out only on the actual amount of rent collected.
- (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 revocation of a continuing appointment does not affect existing contracts entered into by the resident letting agent on behalf of the client.
  - (7) The appointment must be signed and dated by the client and the letting agent or someone authorised or apparently authorised to sign for the letting agent.
  - (8) The letting agent must give a copy of the signed appointment to the client.

Maximum penalty for subsection (8)—200 penalty units.

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**113 Form of appointment**

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

**114 Assignment of appointments**

- (1) This section applies if a resident letting agent who holds appointments from clients to perform services for the clients under section 112 for a building complex proposes to assign the appointments to another person who is to become the resident letting agent for the complex (*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 resident letting agent assigns the appointments, the letting agent must give each client written notice of the proposed assignment and obtain the client's written approval to the assignment.
- (4) The notice must state the following—
  - (a) the proposed assignee's name;
  - (b) 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.

[s 115]

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- (5) If a client agrees to the assignment and the resident letting agent assigns the appointment under this section, the appointment is taken, for section 112, 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 reward or expense**

#### **115      Commission may be claimed only in relation to actual amounts**

- (1) This section applies to a resident letting agent who performs, for the payment of a commission, a service of letting lots or collecting rents.
- (2) The resident letting agent must not claim commission worked out on an amount more than the actual amount collected.

Maximum penalty—200 penalty units.

#### **116      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 resident letting agent unless, at the time the activity was performed, the person—
  - (a) held a resident letting agent's licence; and
  - (b) was authorised under the person's licence to perform the activity; and
  - (c) had been properly appointed under division 2 by the person to be charged with the reward or expense.
- (2) A person is not entitled to sue for, or recover or retain, a reward for the performance of an activity as a resident letting agent that is more than the amount of the reward stated in the appointment given under section 112.
- (3) However, if the reward for the performance of the activity is limited under a regulation, the person is not entitled to sue for,

or recover or retain, a reward more than the amount allowed under a regulation.

- (4) A person is not entitled to sue for, or recover or retain, expenses for the performance of an activity as a resident letting agent that are more than the amount of the expenses stated in the appointment given under section 112 and actually expended.
- (5) However, if the amount of expenses that may be incurred in relation to the performance of the activity is limited under a regulation, the person is not entitled to sue for, or recover or retain, expenses more than the amount allowed under a regulation.
- (6) Subsection (3) does not prevent the person suing for, recovering or retaining, in addition to the amount allowed under a regulation for the reward, an amount for GST payable for a supply.
- (7) A person who sues for, or recovers or retains, a reward or expense for the performance of an activity as a resident letting agent other than as provided by this section commits an offence.

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

**117 Excess fees etc. to be repaid**

- (1) This section applies if—
  - (a) a person is convicted of an offence against section 115(2) or 116(7); and
  - (b) the court convicting the person is satisfied on the balance of probabilities that the person, in connection with the offence, has recovered or retained from someone (*client*) for whom the person performed an activity an amount to which the person was not entitled.
- (2) The court must order the person to pay the amount to the client.

[s 118]

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

#### **Subdivision 4 Code of conduct**

##### **118 Code of conduct**

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

- (a) setting conduct standards for resident letting agents;
- (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.

##### **119 Complaints about conduct and action chief executive may take**

- (1) A person aggrieved by the conduct of a resident letting agent may complain in writing to the chief executive about the conduct.
- (2) The chief executive may investigate the complaint and, if satisfied that the code of conduct has been breached, take the action about 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 193 (Grounds for starting disciplinary proceedings).

- (3) The investigation may take place and action may be taken against a person who was a resident letting agent even though the person is no longer a resident letting agent.

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**Division 3                      General**

**120      Registered office**

A resident letting agent's *registered office* is—

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

**121      Resident letting agent to notify chief executive of change in place of business etc.**

- (1) A resident letting agent who is a principal licensee must—
  - (a) notify the chief executive in the approved form of any change in the letting 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 letting 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 letting agent carries on business within 14 days after the opening.

[s 122]

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Maximum penalty—200 penalty units.

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

Maximum penalty—200 penalty units.

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

Maximum penalty—200 penalty units.

## **122 Display and publication of licensee's name**

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

Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

**123 Principal licensee must keep employment register**

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

Maximum penalty—200 penalty units.

- (2) The resident letting agent must enter, and keep entered, in the employment register the name, and the other particulars that may be prescribed under a regulation, of each person (*employee*) who is employed as a resident letting agent at the place.

Maximum penalty—200 penalty units.

- (3) The resident letting agent must enter the particulars about each employee immediately after the employee is employed at the place.

Maximum penalty—200 penalty units.

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

**124 Access to particular documents**

- (1) This section applies if a resident letting agent (*existing letting agent*)—

- (a) is a letting agent for a community titles scheme; and
- (b) enters into a contract to sell management rights for the community titles scheme to another resident letting agent (*new letting agent*).

- (2) At least 14 days before the day management rights are to pass to the buyer under the contract, the existing letting agent must make available to the new letting agent the existing letting agent's trust account records for the community titles scheme to which the management rights relate for the prescribed period before the intended date of the sale of the management rights.

- (3) If the existing letting agent fails to comply with subsection (2), the new letting agent may avoid the contract.



[s 125]

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(4) In this section—

*community titles scheme* has the meaning given by the *Body Corporate and Community Management Act 1997*, section 10.

*letting agent* has the meaning given by the *Body Corporate and Community Management Act 1997*, section 16.

*management rights* has the meaning given by the *Body Corporate and Community Management Act 1997*, schedule 6.

*prescribed period* means—

- (a) 5 years; or
- (b) if the existing resident letting agent has been the letting agent for the community titles scheme for a shorter period, the shorter period.

## Division 4                      Offences

### 125      **Acting as resident letting 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 resident letting agent's licence unless the person—
  - (a) holds a resident letting agent's 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 lawyer does not act as a resident letting agent only because the lawyer collects rents in the lawyer's practice for lots in a building complex if the lawyer complies with the requirements of the *Legal Profession Act 2007* in relation to the rents.

- (3) A person does not act as a resident letting agent only because the person collects rents for the provider for rooming accommodation, as an employee of the provider, if the rents are collected in the course of the conduct of the service.

**126 Resident letting agent must not act for more than 1 party**

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

**127 Production of licence**

A resident letting agent must, if asked by a person with whom the letting agent is dealing, produce the letting agent's licence for inspection by the person.  
Maximum penalty—100 penalty units.

**Part 5 Employee registration as a property agent salesperson**

**Division 1 Registered employees' authorisation**

**128 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 property agent who employs the holder.

[s 129]

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- (2) However, the registration certificate does not authorise the holder to perform an activity that the holder is not authorised to perform—
  - (a) because of a condition to which the certificate is subject; or
  - (b) under the holder's employment authority.

## **Division 2                    How to obtain registration**

### **129    Steps involved in obtaining registration**

- (1) A person who wishes to obtain registration as a property agent salesperson must be a suitable person to hold registration under part 5.
- (2) The person must apply for registration by—
  - (a) giving the chief executive 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 have 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**

### **130    Application for registration**

- (1) An applicant for registration 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 property agent salesperson; and
  - (e) provide any information the chief executive reasonably requires to decide whether the applicant is suitable and eligible to be a property agent salesperson.
- (2) The application must be accompanied by—
- (a) an application fee; and
  - (b) a registration issue fee; 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.

**131 Requirement to give chief executive information or material about application**

- (1) The chief executive may, by written notice given to an applicant for registration, require the applicant to give the chief executive information or material the chief executive reasonably considers is needed to consider the applicant's application for the registration within a stated reasonable time.
- (2) The applicant is taken to have withdrawn the application if the applicant fails to comply with the chief executive's requirement within the stated reasonable time.

**Division 4 Suitability of applicants**

**132 Suitability of applicants**

- (1) A person is not a suitable person to obtain registration as a property agent salesperson 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

[s 133]

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- (b) currently disqualified from holding a licence or registration certificate; or
  - (c) a person the chief executive decides under section 133 is not a suitable person to obtain registration as a property agent salesperson.
- (2) An individual who is not a suitable person can not obtain registration as a property agent salesperson.

**133 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 property agent salesperson, 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) whether, within the previous 5 years, QCAT, the former tribunal or the District Court has made an order under this Act against the person because of the person's involvement as a marketeer of residential property;
  - (f) the person's criminal history;
  - (g) if the person is affected by bankruptcy action—

- (i) the circumstances giving rise to the person being affected by bankruptcy action; and
  - (ii) whether the person took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the person being affected by bankruptcy action; and
  - (iii) whether the person is in a position to influence significantly the management of a licensee's business;
  - (h) whether the person has been convicted of an offence against a relevant Act or the Administration Act;
  - (i) whether the person is capable of satisfactorily performing the activities of a registered property agent salesperson;
  - (j) whether the person's name appears in the register of disqualified company directors and other officers under the Corporations Act;
- Editor's note—*
- See the Corporations Act, section 1274AA (Register of disqualified company directors and other officers).
- (k) 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 property agent salesperson, 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.

**134 Investigations about suitability of applicants**

- (1) The chief executive may make investigations about the applicant to help the chief executive decide whether the

[s 135]

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applicant is a suitable person to obtain registration as a property agent salesperson.

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

### **135 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 134 about the applicant.
- (2) The requirement is a *criminal history costs requirement*.
- (3) The requirement is sufficiently made of the applicant if it is made generally of applicants for, or for the renewal or restoration of, registration in the relevant approved form or notified on the department's website 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.

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**136 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 134.

Maximum penalty—100 penalty units.

- (2) However, the person does not contravene subsection (1) if—
- (a) disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under or in relation to this Act; or
  - (b) the disclosure is otherwise required or permitted by law.
- (3) The chief executive must destroy a written report about a person's criminal history as soon as practicable after considering the person's suitability to obtain registration as a property agent salesperson.

**137 Requirement to give chief executive information or material about suitability**

- (1) This section applies to an applicant for registration as a property agent salesperson 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 time.
- (3) The applicant is taken to have withdrawn the application if, within the stated reasonable time, the applicant fails to comply with the chief executive's requirement.



[s 138]

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## **Division 5 Eligibility for registration**

### **138 Eligibility for registration as property agent salesperson**

- (1) An individual is eligible to obtain registration as a property agent salesperson 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.
- (2) An individual is to be taken to satisfy the requirement mentioned in subsection (1)(b) if the chief executive is satisfied the individual—
  - (a) has a comparable qualification; or
  - (b) within 2 years before the day the individual's application for employee registration is received by the chief executive—
    - (i) has been the holder of a registration certificate as a property agent salesperson under this Act; or
    - (ii) has been the holder of a comparable certificate under the repealed Act.

## **Division 6 Issue of registration certificate**

### **139 Chief executive may issue or refuse to issue registration certificate**

- (1) The chief executive may issue or refuse to issue a registration certificate to an applicant.
- (2) The chief executive may issue a registration certificate to an applicant only if the chief executive is satisfied—
  - (a) the applicant is a suitable person to hold the registration; and
  - (b) the applicant is eligible to obtain the registration; and

- (c) the application is properly made.
- (3) For subsection (2)(c), the application is properly made only if it complies with section 130 and is accompanied by the things mentioned in that section.
- (4) If the chief executive refuses to issue the registration certificate, the chief executive must give the applicant an information notice about the decision within 14 days after the decision is made.
- (5) If the applicant's application for a registration certificate is refused, the applicant may not make another application for a registration certificate—
  - (a) for 3 months after the day the chief executive gives the applicant the information notice under subsection (4); or
  - (b) if the applicant applies to QCAT to review the chief executive's decision and the decision is confirmed, for 3 months after the day the decision is confirmed.

**140 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.

[s 141]

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- (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**

#### **141      Application for renewal**

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

#### **142      Chief executive may renew or refuse to renew registration                  certificate**

- (1) The chief executive must consider the renewal application and may renew or refuse to renew the registration certificate.
- (2) The chief executive may renew the certificate only if the chief executive is satisfied—
  - (a) the property agent salesperson is a suitable person; and

- (b) the application is properly made; and
  - (c) the employee meets the eligibility requirements for the certificate.
- (3) For subsection (2)(b), an application is properly made only if it complies with section 141(2) and is accompanied by the things mentioned in that subsection.
- (4) If the chief executive decides to refuse the application, the chief executive must give the employee an information notice within 14 days after the decision is made.

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

If an application is made under section 141, the property agent salesperson's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the employee's application for renewal is decided under section 142 or taken to have been withdrawn under section 137(3).

**Subdivision 2 Restoration**

**144 Application for restoration**

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

[s 145]

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- (iii) a registration restoration fee; 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.

**145 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 property agent salesperson is a suitable person; and
  - (b) the application is properly made; and
  - (c) the employee meets the eligibility requirements for the certificate.
- (3) For subsection (2)(b), an application is properly made only if it complies with section 97(2) and is accompanied by the things mentioned in that subsection.
- (4) If the chief executive decides to refuse the application, the chief executive must give the employee an information notice within 14 days after the decision is made.
- (5) If the chief executive decides to restore the certificate—
  - (a) the certificate is taken to have been renewed on the day it would, apart from section 146, 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.

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

If an application is made under section 144, the employee's registration certificate is taken to continue in force from the day that it would, apart from this section, have expired until the employee's application for restoration is decided under section 145 or taken to have been withdrawn under section 137(3).

**Division 8 Dealings with registration certificates**

**Subdivision 1 Transfer of registration certificate**

**147 Transfer of registration certificate prohibited**

A registration certificate may not be transferred.

**Subdivision 2 General**

**148 Amendment of registration certificate conditions**

- (1) The chief executive may amend the conditions of a registration certificate—
  - (a) on the property agent salesperson'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 207 (Orders QCAT may make on disciplinary hearing).

- (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.

[s 148]

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- (3) Before making an amendment under subsection (1)(a), the chief executive must be satisfied the property agent salesperson 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 property agent salesperson—
    - (i) of the particulars of the proposed amendment; and
    - (ii) that the employee may make written submissions to the chief executive about the proposed amendment before a stated day, not later than 14 days after the notice is given to the employee; and
  - (b) have regard to submissions made to the chief executive by the property agent salesperson 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.
- (6) If the chief executive decides to amend the conditions of a registration certificate under subsection (1)(c), the chief executive must give the property agent salesperson an information notice within 14 days after the decision is made.
- (7) The amendment takes effect—
  - (a) on the day the written notice of the amendment is given to the property agent salesperson; 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 property agent salesperson an information notice within 14 days after the decision is made.

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**149 Return of registration certificate for amendment of conditions**

- (1) If the chief executive amends the conditions of a registration certificate under section 148, the chief executive may require the property agent salesperson to produce the certificate for amendment within a stated period of not less than 14 days.
- (2) The employee must comply with a requirement under subsection (1), unless the person has a reasonable excuse.  
Maximum penalty—100 penalty units.

**150 Surrender of registration certificate**

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

**Division 9 Immediate suspension and cancellation of registration certificates**

**151 Immediate suspension**

- (1) This section applies if the chief executive believes, on reasonable grounds, that—
  - (a) a property agent salesperson'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 property agent salesperson of the licensee may be responsible for the irregularity or deficiency; or



[s 152]

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- (c) a property agent salesperson—
  - (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 property agent salesperson's registration certificate, whether or not disciplinary proceedings have been started under this Act.
- (3) The certificate may be suspended for the period (not more than 28 days), and on the conditions, the chief executive decides.
- (4) The chief executive must give the employee an information notice within 14 days after suspending the employee's registration.
- (5) The employee must return the certificate to the chief executive within 14 days after the employee receives the notice, unless the employee has a reasonable excuse.

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

**152 Immediate cancellation**

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

Maximum penalty—100 penalty units.

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**Division 10                      General provisions about employee registration**

**153      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 property agent salesperson;
    - (b) the date of issue of the certificate;
    - (c) the expiry date of the certificate;
    - (d) for a personal identification certificate, a recent photograph of the employee;
    - (e) other particulars that may be prescribed under a regulation.

**154      Term of registration certificate**

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

**155      Replacement certificates**

- (1) A property agent salesperson may apply to the chief executive for the replacement of a lost, stolen, destroyed or damaged registration certificate.

[s 156]

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- (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.

**156 Register of registration certificates**

- (1) The chief executive must keep a register of registration certificates and applications for registration certificates (*registration certificate register*).
- (2) The registration certificate register may form part of the licence register.
- (3) The registration certificate register must contain the following particulars—
  - (a) for each applicant for a registration certificate—
    - (i) the applicant's name; and
    - (ii) the date of the application; and
    - (iii) the application number;
  - (b) for each property agent salesperson—
    - (i) the employee's name; and
    - (ii) the dates of issue and expiry of the employee's current registration certificate; and
    - (iii) any conditions imposed on the certificate; and
    - (iv) the employee's registration certificate number; and
    - (v) particulars of any surrender, suspension, cancellation or revocation of the employee's registration certificate or any licence or certificate issued to the employee under this or the repealed Act.

- (4) A person may, on payment of any fee that may be prescribed under a regulation, inspect, or get a copy of details in, the part of the register containing the particulars mentioned in subsection (3)—
  - (a) at the department's head office when it is open to the public; or
  - (b) by using a computer.
- (5) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.
- (6) The register may be kept in any way the chief executive considers appropriate.
- (7) In this section—  
*contain* includes record and store.

**157 Property agent salespersons to notify chief executive of changes in circumstances**

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

[s 158]

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## **Part 6 Residential property sales**

### **Division 1 Preliminary**

#### **158 Purposes of pt 6**

The purposes of this part are—

- (a) to give persons who enter into relevant contracts as buyers a cooling-off period; and
- (b) to require all proposed relevant contracts and relevant contracts for the sale of residential property in Queensland to have consumer protection information attached, including information stating that a relevant contract is subject to a cooling-off period; and
- (c) to enhance consumer protection for buyers of residential property by ensuring, as far as practicable, the independence of lawyers acting for buyers; and
- (d) to impose obligations on seller's agents about the advertising and availability of information on sustainable housing measures for the sale of particular residential property.

#### **159 Definitions for pt 6**

In this part—

*attached*, in relation to a warning statement, any information sheet and a proposed relevant contract or relevant contract, means—

- (a) if the documents are given other than by electronic communication—attached in a secure way so that the warning statement, any information sheet and the proposed relevant contract or relevant contract appear to be a single document; or

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*Examples of ways a warning statement and any information sheet may be attached to a proposed relevant contract or relevant contract—*

- binding
  - stapling
- (b) if the documents are given by electronic communication—given by electronic communication at the same time or, if the method of electronic communication is by fax, as near as possible to the same time having regard to the normal operation of fax machines.

*Example—*

by including the documents in a single email

***benefit*** means monetary or other benefit.

***business day*** means a day other than a Saturday, Sunday or public holiday.

***buyer***, in relation to a matter, includes the buyer’s agent authorised to act for the buyer in relation to the matter.

***cooling-off period*** see section 168.

***electronic communication*** see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

***formed on a sale by auction*** means formed on sale by auction—

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

*Examples—*

- 1 A contract for the sale of property is formed on a sale by auction when the auctioneer declares the property sold on the fall of the hammer.
- 2 A contract for the sale of property is not formed on a sale by auction when the property is passed in at auction and a bidder subsequently negotiates and purchases the property.

[s 160]

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- 3 A contract for the sale of property is not formed on a sale by auction when the contract arises directly out of a sale by tender process.

**information sheet** means an information sheet in the form approved under the *Body Corporate and Community Management Act 1997*, section 206(6) or 213(5A).

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

**seller**, in relation to a matter, includes the seller's agent authorised to act for the seller in relation to the matter.

**termination penalty**, in relation to a relevant contract, means an amount equal to 0.25% of the purchase price under the relevant contract.

**unit sale** means a sale of a lot included in a community titles scheme, or proposed to be included in a community titles scheme, within the meaning of the *Body Corporate and Community Management Act 1997*.

**warning statement** means a statement in the approved form that includes the information mentioned in section 164(1).

## 160 Relationship with Electronic Transactions (Queensland) Act

To remove any doubt, it is declared that the use of electronic communication under this part is subject to the *Electronic Transactions (Queensland) Act 2001*.

*Note—*

For example, see the *Electronic Transactions (Queensland) Act 2001*, section 11 for a requirement about consent and section 24 for rules about when an electronic communication is received.

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**Division 2                      Independence of lawyers,  
disclosure of interests, and  
particular valuations**

**161      Lawyer’s disclosure to buyer about independence**

- (1) This section applies if a proposed buyer or buyer (in either case, the *buyer*) engages a lawyer in relation to the proposed purchase or purchase of a residential property under a proposed relevant contract or a relevant contract.
- (2) The lawyer must give the buyer a lawyer’s certificate in the approved form and explain to the buyer the purpose and nature of the certificate.
- (3) The lawyer’s certificate must be signed and dated by the lawyer and must state—
  - (a) whether the lawyer is independent of the seller, the seller’s agents and anyone else involved in the sale, or promotion of the sale, or provision of a service in relation to the sale, of the property and whether the lawyer has a business, family or other relationship with any of those persons; and
  - (b) whether the lawyer has received, is receiving, or expects to receive a benefit in relation to the sale, or for promoting the sale, or for providing a service in relation to the sale, of the property, other than professional costs and disbursements payable by the buyer; and
  - (c) the lawyer has explained to the buyer the purpose and nature of the certificate.

**162      Disclosures to prospective buyer**

- (1) A property developer marketing residential property must disclose the following to any prospective buyer of the property—
  - (a) any relationship, and the nature of the relationship (whether personal or commercial), the property



[s 162]

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developer has with anyone to whom the property developer refers the buyer for professional services associated with the sale;

*Examples of relationships for paragraph (a)—*

- 1 a family relationship
  - 2 a business relationship, other than a casual business relationship
  - 3 a fiduciary relationship
  - 4 a relationship in which 1 person is accustomed, or obliged, to act in accordance with the directions, instructions, or wishes of the other
- (b) whether the property developer derives or expects to derive any benefit from a person to whom the property developer has referred the buyer and, if so, the amount, value or nature of the benefit;
- (c) the amount, value or nature of any benefit any person has received, receives, or expects to receive in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property.

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

- finance broker
- financial adviser
- financier
- property valuer
- property developer
- seller
- solicitor

Maximum penalty—200 penalty units.

- (2) The disclosure is effective for subsection (1) only if it is—
- (a) given to the prospective buyer in the approved form; and
  - (b) acknowledged by the prospective buyer in writing on the approved form; and

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- (c) given and acknowledged before a contract for the sale of the residential property is entered into.
  - (3) The approved form must include a statement that a property developer marketing residential property must hold an interest of at least 15% in the property.
  - (4) Also, for subsection (1)(c), disclosure in compliance with the approved form is sufficient.
  - (5) In this section—  
*benefit* means monetary or other benefit.

**163 Buyer to receive copy of property valuation buyer pays for**

- (1) This section applies if, for a relevant contract—
  - (a) it is a term of the relevant contract that the buyer must pay for a valuation of the property that, under the relevant contract, is not required to have been given to the buyer before the relevant contract is entered into; or
  - (b) the seller or the seller's agent otherwise requires that the buyer must pay for a valuation of the property that is not required to be given or to have been given to the buyer before the relevant contract is entered into.
- (2) Despite the term or requirement, the seller or seller's agent commits an offence if the seller or agent fails to give the buyer a copy of the valuation before the relevant contract is entered into.  
Maximum penalty—200 penalty units.
- (3) The term or requirement is effective only if, before the relevant contract was entered into by the buyer, the buyer received the valuation and, in writing, acknowledged the receipt.
- (4) Subsection (3) does not affect subsection (2).
- (5) A contravention of subsection (2) does not affect the validity of the relevant contract.

[s 164]

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**Division 3                      Warning statements for proposed relevant contracts and relevant contracts**

**164      Content and effectiveness of warning statement**

- (1) A warning statement for a proposed relevant contract or relevant contract must include the following information—
  - (a) the relevant contract is subject to a cooling-off period;
  - (b) when the cooling-off period starts and ends;
  - (c) a recommendation that the proposed buyer or buyer seek independent legal advice about the proposed relevant contract or relevant contract before the cooling-off period ends;
  - (d) a recommendation that the proposed buyer or buyer seek an independent valuation of the property before the cooling-off period ends;
  - (e) what will happen if the buyer terminates the relevant contract before the cooling-off period ends;
  - (f) the percentage of the purchase price that will not be refunded from the deposit if the relevant contract is terminated before the cooling-off period ends.
- (2) A statement purporting to be a warning statement is of no effect unless the words on the statement are presented in substantially the same way as the words are presented on the approved form.

**165      Warning statement etc. if proposed relevant contract is given to buyer for signing**

- (1) This section applies—
  - (a) if a proposed relevant contract is given to a proposed buyer by a seller for signing; and
  - (b) whether or not the proposed relevant contract has been signed by the seller.

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- (2) When the seller gives the proposed relevant contract to the proposed buyer the seller must—
    - (a) have a warning statement attached to the proposed relevant contract; and
    - (b) if the proposed relevant contract relates to a unit sale, have an information sheet attached to the proposed relevant contract; and
    - (c) give the proposed buyer a clear statement directing the proposed buyer's attention to—
      - (i) the warning statement and proposed relevant contract; and
      - (ii) if the proposed relevant contract relates to a unit sale, the information sheet.

*Example of a clear statement—*

Suppose that when a proposed relevant contract for a unit sale, warning statement and information sheet are given to a proposed buyer those documents are accompanied by a covering letter. The letter could include a clear statement as follows—

'Your attention is drawn to the warning statement, information sheet and proposed relevant contract accompanying this letter.'

- (3) To remove any doubt, it is declared that a person contravenes subsection (2)(c)(i) or (ii) if at the time the statement is given the warning statement or information sheet is not attached to the proposed relevant contract.
- (4) For this section a proposed relevant contract does not become another proposed relevant contract merely because, as a result of negotiations, the terms and conditions of the proposed relevant contract change if the residential property concerned and the parties remain the same.
- (5) For subsection (4) it is immaterial whether the proposed relevant contract is textually amended to show the changed terms and conditions or another proposed relevant contract form is prepared that incorporates the changes.
- (6) If subsection (2) is contravened—

[s 166]

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- (a) if the seller personally gave the proposed relevant contract—the seller personally; or
- (b) if the seller's agent gave the proposed relevant contract—the seller's agent;

commits an offence.

Maximum penalty—200 penalty units.

- (7) It is a defence to a prosecution for an offence against subsection (6) for the seller or the seller's agent to prove that the seller or the seller's agent gave notice to the proposed buyer under section 166.

**166 Defence for s 165(6)**

- (1) This section applies if, before a proposed relevant contract becomes a relevant contract, the seller or the seller's agent contravenes a requirement of section 165(2) for the proposed relevant contract.
- (2) For the defence mentioned in section 165(7), the seller or the seller's agent may notify the proposed buyer of the failure to comply at any time before the proposed relevant contract becomes a relevant contract.
- (3) The notice must identify the failure to comply and—
  - (a) state that the proposed relevant contract is withdrawn; and
  - (b) advise whether new documents complying with the requirements of section 165(2) will be given to the proposed buyer.

**167 Warning statement must be attached to relevant contract**

- (1) This section applies when a seller gives a buyer a copy of the relevant contract.
- (2) The seller must—
  - (a) have the warning statement mentioned in section 165(2)(a) attached to the relevant contract; and

- (b) if the relevant contract relates to a unit sale, have the information sheet mentioned in section 165(2)(b) attached to the relevant contract.
- (3) If subsection (2) is contravened—
  - (a) if the seller personally gave the buyer a copy of the relevant contract—the seller personally; or
  - (b) if the seller’s agent gave the buyer a copy of the relevant contract—the seller’s agent;

commits an offence.

Maximum penalty for subsection (3)—200 penalty units.

#### **Division 4                    Waiving and shortening cooling-off periods**

##### **168    Cooling-off period**

- (1) The *cooling-off period*, for a relevant contract, is a period of 5 business days—
  - (a) starting on—
    - (i) the day the buyer receives a copy of the relevant contract from the seller; or
    - (ii) if the buyer receives a copy of the relevant contract from the seller on a day other than a business day, the first business day after the day the buyer receives the copy from the seller; and
  - (b) ending at 5p.m. on the fifth business day.

*Example—*

Assume the buyer receives a copy of the relevant contract from the seller at any time on a Monday. Assume also that the cooling-off period is not affected by a day that is not a business day. The cooling-off period ends at 5p.m. on the following Friday.

- (2) For subsection (1), if the buyer signs the relevant contract after the seller signed it, the buyer is taken to have received a copy of the relevant contract from the seller when the buyer

[s 169]

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has both signed the relevant contract and communicated the buyer's acceptance of the seller's offer to the seller.

**169 Waiving cooling-off period**

- (1) A person who proposes to enter into a relevant contract as a buyer (the *buyer*) may only waive the cooling-off period for the relevant contract by giving the seller under the proposed relevant contract a lawyer's certificate in the approved form.
- (2) The lawyer's certificate must be given to the seller before the buyer and the seller enter into the relevant contract.
- (3) The lawyer's certificate must be signed and dated by the lawyer giving the certificate and confirm the following by stating—
  - (a) the lawyer is independent of the seller, the seller's agents and anyone else involved in the sale, or promotion of the sale, or provision of a service in relation to the sale, of the property and has no business, family or other relationship with any of those persons;
  - (b) the lawyer has not received, is not receiving, and does not expect to receive a benefit in relation to the sale, or for promoting the sale, or for providing a service in relation to the sale, of the property, other than professional costs and disbursements payable by the buyer;
  - (c) the lawyer has explained to the buyer—
    - (i) the effect of a relevant contract in terms of the proposed relevant contract; and
    - (ii) the purpose and nature of the certificate; and
    - (iii) the legal effect of the buyer giving the certificate to the seller.

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**170 Shortening cooling-off period**

- (1) A buyer under a relevant contract may only shorten the cooling-off period for the relevant contract by giving the seller a lawyer's certificate in the approved form.
- (2) The lawyer's certificate must be signed and dated by the lawyer giving the certificate and confirm the following by stating—
  - (a) the lawyer is independent of the seller, the seller's agents and anyone else involved in the sale, or promotion of the sale, or provision of a service in relation to the sale, of the property and has no business, family or other relationship with any of those persons;
  - (b) the lawyer has not received, is not receiving, and does not expect to receive a benefit in relation to the sale, or for promoting the sale, or for providing a service in relation to the sale, of the property, other than professional costs and disbursements payable by the buyer;
  - (c) the lawyer has explained to the buyer—
    - (i) the effect of the relevant contract; and
    - (ii) the purpose and nature of the certificate; and
    - (iii) the legal effect of the buyer giving the certificate to the seller.
- (3) The giving of a lawyer's certificate under this section is effective to shorten the period to 5p.m. (or another stated time) on the day stated in the certificate.

**Division 5 Terminating relevant contracts**

**171 Buyer may terminate relevant contract in certain circumstance if clear statement is not given under s 165(2)(c)(i)**

- (1) This section applies if a seller personally or a seller's agent fails to comply with section 165(2)(c)(i).



[s 172]

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- (2) Subject to subsections (3) and (4), if the proposed relevant contract concerned becomes a relevant contract, the buyer may terminate the relevant contract at any time before it settles by giving signed, dated notice of termination to the seller.
- (3) The buyer may not terminate the relevant contract if the buyer signed the warning statement attached to the proposed relevant contract under section 165(2)(a) before the buyer signed the proposed relevant contract.
- (4) The termination must happen not later than 90 days after the day the buyer receives a copy of the relevant contract from the seller.
- (5) The notice of termination must state that the relevant contract is terminated under this section.
- (6) If the relevant contract is terminated, the seller must, within 14 days after the termination, refund any deposit paid under the relevant contract to the buyer.  
Maximum penalty—200 penalty units.
- (7) If the relevant contract is terminated, the seller personally or the seller's agent is liable to the buyer for the buyer's reasonable legal and other expenses incurred by the buyer in relation to the relevant contract after the buyer signed the relevant contract.
- (8) An amount payable to the buyer under this section is recoverable as a debt.

**172 Terminating relevant contract during cooling-off period**

- (1) A buyer who has not waived the cooling-off period for a relevant contract under section 169 may terminate the contract at any time during the cooling-off period or, if that period has been shortened under section 170, the shortened period, by giving a signed, dated notice of termination to the seller.
- (2) The notice of termination must state that the relevant contract is terminated under this section.

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- (3) The seller may deduct from any deposit paid under the relevant contract an amount not greater than the termination penalty.
  - (4) The seller must, within 14 days after the relevant contract is terminated, refund to the buyer—
    - (a) any deposit paid under the relevant contract; or
    - (b) the balance of any deposit paid under the relevant contract after deducting an amount of not more than the termination penalty.Maximum penalty—200 penalty units.
  - (5) An amount payable to the buyer under subsection (4) is recoverable as a debt.

## **Division 6                      Accounting requirements for relevant contracts**

### **173      Application of div 6**

This division applies if—

- (a) the seller under a relevant contract is a property developer; and
- (b) a relevant contract provides for the payment by the buyer under the relevant contract of an amount (*part payment*) for the purchase of property; and
- (c) the buyer is not entitled under the relevant contract to receive a registrable instrument of transfer of the property in exchange for the part payment.

*Example of part payment—*

a deposit payable under the relevant contract

### **174      Part payments must be paid to particular persons**

- (1) The part payment must be paid directly to—

[s 175]

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- (a) the public trustee; or
- (b) a law practice; or
- (c) a property agent;

within 3 business days after the amount is paid by the buyer.

- (2) If the property developer receives a part payment and fails to comply with subsection (1), the property developer commits an offence.

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

- (3) A provision of the relevant contract is void if it provides for payment of the part payment other than in accordance with subsection (1).
- (4) A provision of an instrument made in connection with the relevant contract is void if it provides for payment of the part payment other than in accordance with subsection (1).
- (5) In this section—

*law practice* means any of the following, within the meaning of the *Legal Profession Act 2007*, that has an office in Queensland—

- (a) an Australian legal practitioner who is a sole practitioner but not a barrister under that Act;
- (b) a law firm;
- (c) an incorporated legal practice;
- (d) a multi-disciplinary partnership.

**175 Part payment to be held in trust**

- (1) The part payment must be held—
  - (a) if the part payment is paid to the public trustee, by the public trustee in a trust account kept for the purposes of this Act by the public trustee; or

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- (b) if the part payment is paid to an individual, by the individual in a trust account kept for the purposes of this Act by—
    - (i) the individual; or
    - (ii) if the individual is a member of a firm or partnership, the firm or partnership of which the individual is a member.
  - (2) The part payment must be dealt with by the public trustee, individual, firm or partnership in accordance with the law governing the operation of the public trustee's, individual's, firm's or partnership's trust account.

## **Division 5            Advertising sale of particular properties—sustainability declarations**

### **Subdivision 1        Preliminary**

#### **176    Definitions for div 5**

In this division—

*Building Act* means the *Building Act 1975*.

*current sustainability declaration*, for a residential dwelling, means the current sustainability declaration for the dwelling under the Building Act, chapter 8A, part 1.

*publish* includes—

- (a) publish on the internet; and
- (b) cause to be published.

*relevant advertisement* means an advertisement in any form or medium, other than—

- (a) an advertisement published in a newspaper or magazine; or

[s 177]

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- (b) a sign advertising the sale of a residential dwelling, if the sign was not prepared specifically to advertise the sale of the particular dwelling.

*residential dwelling* means a class 1a building or class 2 building under the Building Act for which a sustainability declaration must be prepared under chapter 8A, part 1, division 2 of that Act.

*Examples of a class 1a building—*

detached house, terrace house and town house

*Example of a class 2 building—*

a building containing 2 or more sole-occupancy units that are separate dwellings

*seller's agent* see section 177(1).

## **Subdivision 2      Requirements about advertising sale, and inspection, of residential dwellings**

### **177      Application of sdiv 2**

- (1) This subdivision applies to an entity (the *seller's agent*) appointed to sell a residential dwelling under a written agreement under this Act by the person authorising the sale of the dwelling.
- (2) However, this subdivision applies to the seller's agent only until the earlier of the following days to happen—
  - (a) the day a contract for the sale of the dwelling settles;
  - (b) the day the dwelling is withdrawn from sale.

### **178      Requirements about advertising sale of residential dwelling**

- (1) The seller's agent must not publish a relevant advertisement for the sale of the residential dwelling unless the advertisement includes information about where a person may

obtain a copy of the current sustainability declaration for the dwelling.

Maximum penalty—100 penalty units.

*Example—*

An advertisement published on the internet might include a link to a website at which a person may obtain a copy of the declaration.

- (2) The seller's agent must not give a person a document advertising the sale of the residential dwelling unless—
  - (a) the person has a copy of the current sustainability declaration for the dwelling; or
  - (b) a copy of the declaration accompanies the document.

Maximum penalty—100 penalty units.

- (3) Subsection (2) does not apply to the seller's agent if the document is given to the person at—
  - (a) the residential dwelling; and
  - (b) a time it is generally open to the public for inspection by potential buyers of the dwelling.

**179 Requirements about inspection of residential dwelling**

- (1) At any time the residential dwelling is generally open to the public for inspection by potential buyers of the dwelling, the seller's agent must ensure a copy of the current sustainability declaration for the dwelling is conspicuously displayed so anyone entering the dwelling can easily read the declaration.

Maximum penalty—100 penalty units.

- (2) If a person enters the residential dwelling to inspect it as a potential buyer of the dwelling, other than at a time mentioned in subsection (1), the seller's agent must ensure—
  - (a) the person has a copy of the current sustainability declaration before the person enters the dwelling; or
  - (b) a copy of the declaration is readily available for inspection by the person before the person enters the

[s 180]

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dwelling and the person is advised by the seller's agent that a copy is available for inspection; or

- (c) a copy of the declaration is conspicuously displayed at the dwelling so the person can easily read it.

Maximum penalty—100 penalty units.

**180 Requirement to give copy of sustainability declaration**

If a person who is a potential buyer of the residential dwelling asks the seller's agent for a copy of the current sustainability declaration for the dwelling, the seller's agent must give the person a copy as soon as practicable.

Maximum penalty—100 penalty units.

**181 Breach of obligation does not give rise to civil right or remedy**

A breach of an obligation under this subdivision does not of itself give rise to an action for breach of statutory duty or another civil right or remedy.

**Subdivision 3 Publishing or giving incomplete or false or misleading sustainability declaration**

**182 Application of sdiv 3**

This subdivision applies if—

- (a) a seller's agent—
  - (i) publishes a relevant advertisement for the sale of a residential dwelling that includes information about a current sustainability declaration for the dwelling; or
  - (ii) gives or makes available to a person a current sustainability declaration for the dwelling; and

- (b) the declaration is incomplete or contains information that is false or misleading; and
- (c) if the declaration contains information that is false or misleading—the information was not included in the declaration by the seller’s agent, or because of any representation made by or for the seller’s agent, after the seller signs it.

**183 No right to terminate contract for publishing or giving declaration**

The buyer under a relevant contract, or a contract formed on a sale by auction, for the sale of the residential dwelling can not terminate the contract only because the declaration is incomplete or contains information that is false or misleading.

**184 Publishing or giving declaration does not contravene particular provisions**

- (1) It is declared that the mere publication of the advertisement or the giving of or making available the declaration does not constitute a contravention of any of the following provisions by the seller’s agent—
  - (a) section 229, 230, 231 or 234(1);
  - (b) the *Fair Trading Act 1989*, section 38, 39, 40 or 40A.

*Editor’s note—*

*Fair Trading Act 1989*, section 38 (Misleading or deceptive conduct—TPA s 52), 39 (Unconscionable conduct—TPA s 51AB), 40 (False or misleading representations—TPA s 53) or 40A (False representations and other misleading or offensive conduct in relation to land—TPA s 53A)

- (2) To remove any doubt, it is declared that merely publishing the advertisement, or giving or making available the declaration, does not constitute a contravention of section 229, 230(1), 231(1) or 234(1) for which a person may make a claim against the fund.
- (3) Subsection (2) applies despite section 188(1)(a).



[s 185]

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## Part 7 Trust accounts

### 185 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 property agent.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) In this section—

*amount*—

- (a) includes deposit and purchase money for a transaction; but
- (b) does not include an amount payable to the licensee in relation to a transaction in refund of an expense the licensee was authorised to incur and did incur and for which the licensee holds a receipt.

## Part 8 Claims against the fund

### Division 1 Preliminary

#### 186 Definitions for pt 8

In this part—

*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.

**marketeering contravention** means a contravention of any of the following by a relevant person—

- (a) section 229, 230 or 231;
- (b) section 573A, 573B or 573C of the repealed Act.

**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.

**187 What is the purchase of a *non-investment residential property***

A person purchases a *non-investment residential property* only if—

- (a) the property is a residential property; and
- (b) either of the following has been assessed in relation to the purchase—
  - (i) a concession, under the *Duties Act 2001*, chapter 2, part 9, for transfer duty;
  - (ii) a concession, under the repealed *Stamp Act 1894*, section 55A, for stamp duty.

**Division 2 Claims against the fund**

**Subdivision 1 Who can claim**

**188 Claims**

- (1) A person may make a claim, in the way provided under the Administration Act, against the fund if the person suffers

[s 188]

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financial loss because of the happening of any of the following events—

- (a) the contravention of any of the following provisions by a relevant person—
- section 88, 89 or 193(1)
  - section 185
  - section 223
  - section 224
  - section 225
  - section 226
  - section 229;

*Note—*

See, however, section 184 for particular activities that do not constitute a contravention of section 224, 225(1), 226(1) or 229(1) for which a person may make a claim against the fund.

- (b) a contravention of any of the following provisions of the *Land Sales Act 1984* by a licensee appointed by the owner of land to which that Act applies or a relevant person employed by the licensee—
- section 9
  - section 11
  - section 12
  - section 21
  - section 23
  - section 24;
- (c) 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 under subsection (1) 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.

**189 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(1)(c) can not make a claim against the fund.
- (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;
  - (c) a person who suffers financial loss because of a failure to disclose or make effective disclosure under section 82;
  - (d) a person who suffers financial loss because of, or arising out of, a marketeering contravention in relation to the purchase by the person of a residential property, other than a non-investment residential property.

**190 Claims limited to realised loss**

- (1) A person may make a claim against the fund for financial loss relating to a non-investment residential property purchased by the person because of, or arising out of, a marketeering contravention only to the extent the loss is capital loss.

[s 191]

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- (2) Also, capital loss mentioned in subsection (1) may be claimed only if the loss has been realised as mentioned in the Administration Act, section 102.

## **Part 9                      Jurisdiction of QCAT**

### **191      Definitions for pt 9**

In this part—

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

*former registered employee* means a person who was a registered employee, or the holder of a 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.

### **192      Jurisdiction**

For this Act, QCAT has the following jurisdiction—

- (a) to hear and decide disciplinary matters involving a licensee, property agent salesperson or a former registered employee;
- (b) to hear and decide applications under this Act relating to marketeers;
- (c) to review decisions of the chief executive in relation to licensing or registration.

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## **Part 10 Proceedings**

### **Division 1 Disciplinary proceedings**

#### **193 Grounds for starting disciplinary proceedings**

- (1) The following are grounds for starting a disciplinary proceeding against a licensee or property agent salesperson—
  - (a) the licensee or employee has been convicted of an indictable offence or an offence against this Act or the Administration Act;
  - (b) the licensee or employee has contravened or breached—
    - (i) this Act, including a code of conduct; or
    - (ii) the Administration Act; or
    - (iii) an undertaking given under part 11, division 2; or
    - (iv) a corresponding law;
  - (c) the licensee or employee has been disqualified from holding a licence under a corresponding law;
  - (d) an amount has been paid from the fund because the licensee or employee did, or omitted to do, something that gave rise to a claim against the fund;
  - (e) the licensee or employee fraudulently or improperly obtained, or helped someone else to fraudulently or improperly obtain, a licence or registration certificate;
  - (f) the licensee or employee has failed to comply with an order made by a court, the former tribunal or QCAT;
  - (g) for a licensee—
    - (i) the licensee is not a suitable person to hold a licence; or
    - (ii) the licensee has carried on, or is carrying on, business under a licence with someone who is not a suitable person to hold a licence; or

[s 193]

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- (iii) the licensee has, in carrying on a business or performing an activity, been incompetent or acted in an unprofessional way; or
  - (iv) the licensee has failed to ensure that the licensee's employed licensees or property agent salespersons, 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 207; or
  - (vii) if the licensee is a corporation—
    - (A) an executive officer of the corporation is not a suitable person to be an executive officer of a corporation; or
    - (B) an executive officer of the corporation is disqualified under this Act from being an executive officer of a corporation;
  - (h) for a property agent salesperson—
    - (i) the employee is not eligible to be employed as a property agent salesperson; or
    - (ii) the employee has—
      - (A) in performing an activity of a licensee, been incompetent or acted in an unprofessional way; or
      - (B) performed an activity not authorised under the employee's employment authority.
- (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.

**194 Starting disciplinary proceedings**

The chief executive may apply to QCAT to conduct a proceeding to decide whether grounds exist under section 193 for taking disciplinary action against a licensee or property agent salesperson.

**Division 2                    Marketeer proceedings**

**195 Grounds for starting marketeer proceeding**

The following are grounds for starting a proceeding against a marketeer for orders under section 209 (*marketeer proceeding*)—

- (a) the marketeer has contravened or is contravening section 224, 225 or 226;
- (b) the marketeer is likely or proposing to engage in conduct that would contravene section 224, 225 or 226;
- (c) the marketeer is reasonably suspected of anything mentioned in paragraph (a) or (b).

**196 How to start a proceeding**

- (1) The chief executive may apply, as provided under the QCAT Act, to QCAT to conduct a marketeer proceeding.
- (2) The application must state—
  - (a) the grounds for starting the proceeding; and
  - (b) the conduct constituting the grounds; and



[s 197]

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- (c) that an application will be made for orders under section 530A.

### **Division 3                    Review proceedings**

#### **197     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 mentioned in schedule 1 may apply to QCAT to have the decision reviewed (*application for review*).

#### **198     Stay of operation of decisions**

- (1) A decision of the chief executive, other than a decision made under section 62 or 151 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.

#### **199     Tribunal may extend time**

- (1) The tribunal may extend the time within which to file the claim or seek review of a decision of the chief executive if the tribunal is satisfied—
  - (a) the application is made—
    - (i) for a claim—within the time mentioned in the notice given under the Administration Act, section 87(5); or
    - (ii) for a review of a decision of the chief executive—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 reasons for not making the claim or seeking the review within the time allowed; and

- (ii) the application generally; and
  - (iii) for a claim, the relative hardship that an extension of time or a refusal to extend time would place on the claimant or respondent; and
  - (iv) the justice of the matter generally.
- (2) No appeal lies against the tribunal's decision under this section.

## **Division 4 Proceedings generally**

### **Subdivision 1 Reference committee**

#### **200 Reference committee**

- (1) A reference committee is established.
- (2) The reference committee consists of—
  - (a) the commissioner for fair trading; and
  - (b) 2 community representatives who are not public service employees.
- (3) One of the community representatives must have a demonstrated interest in civil liberties and the other must be a person the Minister considers has appropriate and relevant experience in fair trading issues.
- (4) Community representatives are to be appointed by the Governor in Council.
- (5) The community representatives' appointment term and conditions are as decided by the Governor in Council.

#### **201 Reference committee functions**

The reference committee's function is to decide whether conduct of a marketeer that is being investigated under this

[s 202]

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Act should be the subject of an application to QCAT for a public examination.

**202 Reference committee may authorise application for public examination**

- (1) If the chief executive considers that a public examination may help the chief executive decide whether or not to start a marketeer proceeding against a marketeer, the chief executive may refer the conduct to the reference committee.
- (2) After considering all relevant issues, the reference committee may authorise the chief executive to make an application to QCAT for a public examination under subdivision 2.
- (3) The reference committee must not authorise the chief executive to make the application unless satisfied—
  - (a) it is unlikely further investigation of the conduct by an inspector will be effective for deciding whether to start a marketeer proceeding; and
  - (b) a public examination may help find out whether a marketeer has contravened section 224, 225 or 226; and
  - (c) it is in the public interest to make the application.

**Subdivision 2 Public examinations**

**203 QCAT may conduct public examination**

- (1) QCAT may, on the chief executive's application, conduct a public examination that investigates the conduct of a marketeer to find out whether the marketeer has contravened section 224, 225 or 226.
- (2) The application may be made whether or not a marketeer proceeding has been started.
- (3) This division applies to a public examination as if it were a hearing before QCAT.

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**204 Procedure before public examination starts**

- (1) Before the start of a public examination, QCAT must be satisfied each person to be examined has received written grounds for the public examination.
- (2) On being satisfied under subsection (1), QCAT must—
  - (a) decide a time and place for the public examination; and
  - (b) issue an attendance notice to each person to be examined.
- (3) If a person to be examined is a corporation, for the purposes of the public examination, QCAT must issue the attendance notice requiring a named executive officer of the corporation to attend QCAT for examination.
- (4) The attendance notice must state—
  - (a) the time and place for the public examination decided by QCAT; and
  - (b) the person may make oral and written submissions at the public examination.
- (5) The chief executive must serve the attendance notice on the person to whom it was issued.

**205 Person must answer particular questions**

- (1) This section applies if a person being examined at a public examination refuses to answer any question put to the person.
- (2) If QCAT requires the person to answer the question, QCAT must advise the person of the following—
  - (a) that if the answer might incriminate the person, the person may claim, before giving the answer, that giving the answer might incriminate the person;
  - (b) the effect that making the claim will have on the admissibility of the answer in any proceeding against the person.
- (3) The person must answer the question, unless the person has a reasonable excuse.

[s 206]

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Maximum penalty—500 penalty units.

- (4) It is not a reasonable excuse to fail to answer the question that answering might tend to incriminate the person.
- (5) The answer is not admissible in any criminal or civil proceeding against the person, other than—
  - (a) the public examination of a person; or
  - (b) a proceeding to review a reviewable decision; or
  - (c) an appeal against QCAT’s decision to require the answer; or
  - (d) a perjury proceeding.
- (6) In this section—

*perjury proceeding* means a proceeding in which the falsity or misleading nature of the answer is relevant.

*reviewable decision* means a decision of the chief executive mentioned in schedule 1.

### **Subdivision 3      Stopping particular conduct**

#### **206      Stopping particular conduct**

- (1) This section applies if a marketeer proceeding has been started against a marketeer and, on the chief executive’s application, QCAT is satisfied, or is satisfied there is a reasonable suspicion, that the marketeer—
  - (a) has contravened or is contravening section 224, 225 or 226; or
  - (b) is likely or proposing to engage in conduct that would contravene section 224, 225 or 226.
- (2) QCAT may, by order, prohibit the marketeer from engaging in conduct that, alone or together with other conduct, is a contravention of section 224, 225 or 226, until the end of the marketeer proceeding.

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

#### **Subdivision 4 QCAT's orders**

##### **207 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
    - (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;

[s 207]

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- (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 247(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.

**208 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) This section does not apply if section 206 applies.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) A person must not contravene an order under this section.  
Maximum penalty—540 penalty units.
- (7) An order under this section has effect on the giving of a copy of the order to the prohibited person.

**209 Orders QCAT may make in a marketeer proceeding**

- (1) This section applies if, in a marketeer proceeding, QCAT is satisfied a marketeer has contravened section 224, 225 or 226.
- (2) QCAT may make 1 or more of the following orders against the marketeer—
  - (a) an order that the person pay to the chief executive, within the time stated in the order, an amount of not more than the money value of—
    - (i) for an individual—200 penalty units; or
    - (ii) for a corporation—1000 penalty units;



[s 209]

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- (b) an order that the person's licence or registration certificate, if any, be suspended for the period stated in the order;
- (c) an order—
  - (i) if the person is the holder of a licence or registration certificate when the order is made—that the licence or registration certificate be cancelled; or
  - (ii) whether or not the person is the holder of a licence or registration certificate when the order is made—that the person be disqualified, for the period stated in the order, of not more than 5 years, from holding a licence or registration certificate;
- (d) an order that an individual be disqualified, for the period stated in the order, of not more than 5 years, from being an executive officer of any corporation that holds a licence;
- (e) an order imposing conditions on, or amending or revoking the conditions of, the person's licence or registration certificate, if any;
- (f) an order prohibiting a person from being involved in any way in the business of the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property in Queensland for the period stated in the order, of not more than 5 years;
- (g) an order restricting the way the person conducts the business of the sale, or promotion of the sale, or provision of a service in connection with the sale, of residential property in Queensland for the period stated in the order, of not more than 5 years;
- (h) an order to pay to a person who has suffered financial loss, as compensation, an amount, decided by QCAT, up to the limit of a Magistrates Court's civil jurisdiction;
- (i) another order QCAT considers appropriate to ensure the person complies with this Act.

- (3) However, QCAT may make an order under subsection (2)(a) or (h) against a person who is not licensed or a property agent salesperson only on the basis of evidence, submissions and other information received in accordance with the evidentiary law and practice applicable to a civil proceeding in a Magistrates Court.
- (4) If—
- (a) QCAT proposes to order a marketeer to pay an amount to the chief executive under subsection (2)(a)(i) and compensation under subsection (2)(h); and
  - (b) the marketeer does not have enough financial resources to pay both;
- QCAT must prefer to make an order for compensation.
- (5) If—
- (a) QCAT orders a corporation to pay an amount to the chief executive under subsection (2)(a)(ii) or compensation under subsection (2)(h); and
  - (b) the corporation does not have enough financial resources to pay either or both;
- the executive officers of the corporation are jointly and severally liable to pay any amount not paid by the corporation.
- (6) It is a defence to a liability under subsection (5) for an executive officer to prove that—
- (a) if the officer was in a position to influence the conduct of the corporation in relation to the conduct in question—the officer took all reasonable steps to ensure the corporation did not contravene section 224, 225 or 226; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the conduct in question.
- (7) For subsection (6)(a), it is sufficient for the executive officer to prove that the act or omission that was the conduct in question was done or made without the officer's knowledge

[s 210]

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despite the officer having taken all reasonable steps to ensure the corporation did not contravene section 224, 225 or 226.

**210 Criteria for deciding amount to be ordered**

To decide the amount a person may be ordered to pay under section 209, QCAT must consider—

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

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**Subdivison 5 Chief executive's right of appeal**

**211 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 11 Injunctions, undertakings,  
preservation of assets and civil  
penalties**

**Division 1 Injunctions**

**212 Injunctions**

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

**213 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.

[s 214]

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

**215 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.

**216 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) other than 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.

**217 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**

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

- (1) If the chief executive believes, on reasonable grounds, a person has contravened or been involved in a contravention of

[s 219]

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this Act or a code of conduct, the chief executive may, by written notice given to the person—

- (a) state the act or omission the chief executive believes is the contravention; and
  - (b) ask the person to give the chief executive a written undertaking that the person will not continue or repeat the act or omission.
- (2) If—
- (a) the person gives the undertaking and, if the contravention is conduct consisting of a series of acts or omissions, the person stops the conduct; and
  - (b) the chief executive accepts the undertaking;

the chief executive can not start an offence proceeding against the person for the contravention, unless the chief executive withdraws the undertaking under section 220.

#### **219 Undertaking about other matter**

Without limiting section 218, 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

#### **220 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 in a way unknown to the chief executive; and
  - (ii) had the chief executive known about the contravention, the chief executive would not have accepted the undertaking or would not have accepted it unless its terms were changed.
- (2) The chief executive may also withdraw the undertaking if the chief executive believes, on reasonable grounds, it is no longer necessary.
- (3) If the chief executive varies or withdraws, or agrees to the variation or withdrawal of, the undertaking, the chief executive must give the person who gave it written notice of its variation or withdrawal.
- (4) The variation or withdrawal takes effect when written notice of the variation or withdrawal is received by the person.

**221 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;



[s 222]

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- (e) another order the court considers appropriate.
- (3) The District Court may order the forfeiture to the State of all or part of a security bond given by a person under subsection (2)(d) if—
  - (a) the chief executive applies to the court for the order; and
  - (b) the court is satisfied that the person contravened the undertaking during the period for which the bond was given.

## **222 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) The chief executive may publish the information contained in the register on the department's website.
- (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 register—
  - (a) at a place or places decided by the chief executive; 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.

## **Division 3 Preservation of assets**

### **223 Powers of court for preservation of assets**

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

- (a) a proceeding before the District Court for the grant of an injunction;
  - (b) a proceeding before the District Court about a contravention of an undertaking;
  - (c) a marketeer proceeding;
  - (d) a proceeding before the District Court under division 4 for a civil penalty.
- (2) On the chief executive's application, the District Court may make an order mentioned in subsection (3) if satisfied that—
- (a) it is necessary or desirable to preserve property held by or for the marketeer because the marketeer is or may become liable under this Act—
    - (i) to pay an amount to the chief executive; or
    - (ii) to pay compensation; or
    - (iii) to refund an amount; or
    - (iv) to transfer, sell or return other property; and
  - (b) it will not unduly prejudice the rights and interests of any other person.
- (3) The orders the court may make are—
- (a) an order prohibiting a person who owes an amount to the marketeer or an associate of the marketeer from paying all or part of the amount to, or to another person at the request of, the marketeer or associate; and
  - (b) an order prohibiting a person holding property for the marketeer or an associate of the marketeer from transferring all or any of the property to, or to another person at the request of, the marketeer or associate; and
  - (c) an order prohibiting the taking by any person of the property of the marketeer or an associate of the marketeer out of the State; and
  - (d) if the marketeer is an individual—an order appointing, with the powers stated in the order, a receiver or trustee

[s 223]

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of all or part of the property of the marketeer or an associate of the marketeer.

- (4) Subject to subsection (5), the order may be expressed to operate—
  - (a) for a stated period; or
  - (b) until proceedings under any other provision of this Act in relation to which the order was made have ended.
- (5) An application and an order may be made under this section without notice to, and in the absence of, the marketeer or the associate, but in that case the order must not be made for a period of more than 30 days.
- (6) A person to whom an order is directed under this section must comply with the order.  
Maximum penalty—540 penalty units.
- (7) In this section—
  - associate**, of a marketeer, means—
    - (a) a person holding property for the marketeer; or
    - (b) if the marketeer is a body corporate—a wholly-owned subsidiary of the marketeer.

**prohibit** means prohibit absolutely or on conditions.

**request** includes direction.

**take** includes the following—

- (a) send;
- (b) transfer.

**transferring** means transferring, paying or otherwise parting with possession of.

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**Division 4                      Civil penalties and compensation  
orders for particular contraventions**

**224      Application of division 4**

This part applies if a person contravenes section 229, 230 or 231.

**225      Application for order imposing civil penalties**

- (1) The chief executive may apply to the District Court (*court*) for an order requiring the person—
  - (a) to pay to the State a money penalty; or
  - (b) to pay to a person who suffered financial loss because of the contravention an amount as compensation.
- (2) The application may be made together with any other application the chief executive may make under this chapter.

**226      Orders District Court may make**

- (1) This section applies if the court is satisfied the person has contravened section section 229, 230 or 231.
- (2) The court may order the person to pay to the State, as a money penalty, an amount up to the limit of the court's civil jurisdiction for each contravention.
- (3) If satisfied another person has suffered financial loss because of the contravention, the court may order the person to pay to the other person, as compensation, an amount, decided by the court, up to the limit of the court's civil jurisdiction.
- (4) If—
  - (a) the court proposes to order an individual to pay a money penalty under subsection (2) and compensation under subsection (3); and
  - (b) the person does not have the resources to pay both;  
the court must prefer to make an order for compensation.

[s 227]

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- (5) If—
- (a) the court orders a corporation to pay a money penalty under subsection (2) or compensation under subsection (3); and
  - (b) the corporation does not have the resources to pay either or both;
- the executive officers of the corporation are jointly and severally liable to pay any amount not paid by the corporation.
- (6) It is a defence to a liability under subsection (5) for an executive officer to prove that—
- (a) if the officer was in a position to influence the conduct of the corporation in relation to the conduct in question—the officer took all reasonable steps to ensure the corporation did not contravene section section 229, 230 or 231; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the conduct in question.
- (7) For subsection (6)(a), it is sufficient for the executive officer to prove that the act or omission that was the conduct in question was done or made without the officer’s knowledge despite the officer having taken all reasonable steps to ensure the corporation did not contravene section 229, 230 or 231.

**227 Criteria for deciding amount to be ordered**

To decide an amount a person may be ordered to pay under section 226, the court must consider—

- (a) the person’s conduct before and after the contravention; and
- (b) whether the conduct was deliberate; and
- (c) the period over which the conduct happened; and
- (d) the amount of financial loss caused by the contravention; and



[s 229]

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- (a) dishonestly converts the amount to the licensee's own or someone else's use; or
- (b) dishonestly renders an account of the amount knowing it to be false in a material particular;

commits a crime.

Maximum penalty—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, in the performance of the activities of a licensee, must not, including by the rendering of an account, represent that the licensee has received an amount from someone else when the licensee had not in fact received 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.

## 229 Misleading conduct

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

*Note—*

For remedies for a contravention, see part 11 (Injunctions, undertakings, preservation of assets and civil penalties).

## 230 Unconscionable conduct

- (1) A marketeer must not, in connection with the sale, or for promoting the sale, or for providing a service in connection

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with the sale, of residential property in Queensland, engage in conduct that is, in all the circumstances, unconscionable.

*Note—*

For remedies for a contravention, see part 11 (Injunctions, undertakings, preservation of assets and civil penalties).

- (2) Without limiting the matters to which regard may be had to decide whether a marketeer has contravened subsection (1), regard may be had to—
- (a) the relative strengths of the bargaining positions of the marketeer and the buyer of the property; and
  - (b) whether, because of conduct engaged in by the marketeer, the buyer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the marketeer; and
  - (c) whether the buyer was able to understand any documents relating to the sale, or promotion of the sale, or provision of a service in connection with the sale, of the property; and
  - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the buyer or the person acting for the buyer by the marketeer in connection with the marketing of the property; and
  - (e) the amount for which, and the circumstances under which, the buyer could have acquired an equivalent or similar property from another person; and
  - (f) the extent to which the marketeer's conduct towards the buyer was consistent with the marketeer's conduct in similar transactions between the marketeer and other like buyers; and
  - (g) the requirements of any applicable code of conduct; and
  - (h) the extent to which the marketeer unreasonably failed to disclose to the buyer—
    - (i) any intended conduct of the marketeer that might affect the interests of the buyer; and



[s 230]

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- (ii) any risks to the buyer arising from the marketeer's intended conduct, if the risks are risks the marketeer should have foreseen would not be apparent to the buyer; and
- (i) the extent to which the marketeer failed to disclose to the buyer—
  - (i) any relationships of the marketeer to other marketeers in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of the property; or
  - (ii) anything required to be disclosed under this Act; and
- (j) the extent to which the marketeer was unwilling to negotiate the terms and conditions of any contract for the sale of the property with the buyer; and
- (k) whether or not it was reasonably practicable for the buyer to negotiate for the alteration of, or to reject, any of the provisions of the contract for the property; and
- (l) whether or not the buyer or a person who represented the buyer was reasonably able to protect the interests of the buyer because of the age or physical or mental condition of the buyer or the person who represented the buyer; and
- (m) whether or not, and if so when, the buyer obtained, or an opportunity was made available to the buyer to obtain, independent legal, valuation or other expert advice; and
- (n) the extent to which the provisions of the contract and the contract's legal and practical effect were accurately explained to the buyer and whether or not the buyer understood those provisions and their effect; and
- (o) whether the marketeer took measures to ensure that the buyer understood the nature and implications of the transaction and, if so, the adequacy of those measures; and

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- (p) whether at the time the contract was entered into, the marketeer knew, or could have ascertained by reasonable inquiry of the buyer at the time, that the buyer could not pay in accordance with its terms or not without substantial hardship; and
  - (q) the extent to which the marketeer and the buyer acted in good faith; and
  - (r) any other relevant factor.

**231 False representations and other misleading conduct in relation to residential property**

- (1) A marketeer must not, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property in Queensland, represent in any way to someone else anything that is false or misleading.

*Note—*

For remedies for a contravention, see part 11 (Injunctions, undertakings, preservation of assets and civil penalties).

- (2) Without limiting subsection (1), a marketeer must not, in connection with the sale, or for promoting the sale, or for providing a service in connection with the sale, of residential property, or the possible sale of residential property in Queensland—
  - (a) represent that the person has a sponsorship, approval or affiliation the person does not have; or
  - (b) make a false or misleading representation about—
    - (i) the nature of the interest in the property; or
    - (ii) the price payable for the property; or
    - (iii) the location of the property; or
    - (iv) the characteristics of the property; or
    - (v) the use to which the property is capable of being put or may lawfully be put; or

[s 231]

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- (vi) the existence or availability of facilities associated with the property; or
  - (vii) the value of the property at the date of the sale; or
  - (viii) the potential income from the leasing of the property; or
  - (ix) if the property has been previously sold, the date of the sale and the consideration for the sale; or
  - (x) how the purchase of the property may affect the incidence of income taxation on the buyer; or
- (c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.

*Note—*

For remedies for a contravention see part 11 (Injunctions, undertakings, preservation of assets and civil penalties).

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

*Editor's note—*

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

- (8) In this section—

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

**232 Application of ss 224, 225 and 226**

- (1) Section 229, 230 and 231 are in addition to, and do not limit, any other law, written or unwritten, about conduct mentioned in them.
- (2) Sections 229, 230 and 231 apply to conduct, whether happening in or outside Queensland, relating to residential property in Queensland.

**233 Offensive conduct in relation to residential property**

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

Maximum penalty—540 penalty units.

- (2) In this section—

***unduly harass*** includes the following—

- (a) the use of any physical force;
- (b) coercion.

**234 False representations about property**

- (1) A licensee or property agent salesperson must not represent in any way to someone else anything that is false or misleading in relation to the letting, exchange or sale of property.

Maximum penalty—540 penalty units.

[s 234]

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- (2) Without limiting subsection (1), a licensee or property agent salesperson must not, in connection with the sale, or the possible sale, of an interest in land or in connection with the promotion in any way of the sale of an interest in land, represent in any way to someone else anything that is false or misleading in relation to—
- (a) the value of the land at the date of sale; or
  - (b) the potential income from the leasing of the land; or
  - (c) if the land has been previously sold, the date of the sale and the consideration for the sale; or
  - (d) how the purchase of the land may affect the incidence of income taxation on the buyer.

Maximum penalty—540 penalty units.

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

*Editor's note—*

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

- (8) In this section—

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

*licensee* includes a person acting as a licensee, but does not include a commercial agent.

*property agent salesperson* includes a person acting as a property agent salesperson, but does not include a commercial agent.

**235 Representation of price of property to seller—property agent**

- (1) This section applies if a person wanting to sell residential property (*seller*) asks a property agent for information about the price at which residential property that is to be, or may be, offered for sale by auction (*offered property*) is likely to be sold if it is sold by auction.

- (2) The property agent must give the seller a written notice stating that if the seller does not set a price at which the seller agrees to sell the offered property (*reserve price*), the offered property will be sold for the price offered by the highest of any bids made when the property is auctioned.

Maximum penalty—200 penalty units.

- (3) If the seller appoints the property agent to sell the offered property, the property agent must obtain from the seller before the offered property is auctioned a written notice stating the following—

- (a) if the seller sets a reserve price—the reserve price;
- (b) if the seller does not set a reserve price—that the seller understands that the offered property will be sold for the highest of any bids made when the offered property is auctioned.

Maximum penalty—200 penalty units.

[s 236]

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- (4) A property agent must not help a seller decide the reserve price for offered property unless, before the seller decides the price, the property agent gives the seller—
- (a) a copy of a comparative market analysis for the offered property; or
  - (b) if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the property agent decided the market value of the property.

Maximum penalty—540 penalty units.

- (5) In this section—

*comparative market analysis*, for an offered property, means a document comparing the offered property with at least 3 properties sold within the previous 6 months that are of a similar standard or condition to the offered property and are within 5km of that property.

**236 Property agent not to indicate reserve or other price to bidder**

- (1) This section applies if a person (*bidder*) wanting to bid for residential property that is to be, or may be, offered for sale by auction (*offered property*) asks a property agent for information about the price at which the offered property is likely to be sold when it is auctioned.
- (2) The property agent must not in any way disclose to the bidder—
- (a) whether the seller has set a reserve price for the offered property under section 235; or
  - (b) the reserve price set under section 235 for the offered property; or
  - (c) an amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property.

Maximum penalty—540 penalty units.

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- (3) However, the property agent does not commit an offence against subsection (2) if, on the seller's written instructions, the property agent gives the bidder whichever of the following was given to the seller—
    - (a) the comparative market analysis for the offered property;
    - (b) the written explanation showing how the property agent decided the market value of the property.
  - (4) In this section—  
*comparative market analysis*, for offered property, see section 235.

**237 Representation of price of property—property agent**

- (1) This section applies if a person wanting to sell residential property asks a property agent for information about the price at which residential property that is to be, or may be, offered for sale, whether or not by auction, (*offered property*) is likely to be sold.
- (2) If the property agent decides to give the person the information, the property agent must, when giving the person the information, give the person—
  - (a) a copy of a comparative market analysis for the offered property; or
  - (b) if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the property agent decided the market value of the property.

Maximum penalty—540 penalty units.
- (3) In this section—  
*comparative market analysis*, for offered property, see section 235.



[s 238]

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**238 Property agent not to indicate reserve price to potential buyer**

- (1) This section applies if a person wanting to buy residential property (*potential buyer*) asks a property agent for information about the price at which residential property that is to be, or may be, offered for sale, whether or not by auction, (*offered property*) is likely to be sold or is, or is likely to be, offered for sale.
- (2) If the offered property is to be offered for sale by auction, the property agent must not disclose to the potential buyer—
  - (a) whether the seller has set a reserve price for the offered property; or
  - (b) the reserve price set for the offered property; or
  - (c) an amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property.

Maximum penalty—540 penalty units.

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

Maximum penalty—540 penalty units.

- (4) However, the property agent does not commit an offence against subsection (2) or (3) if, on the seller's written instructions, the property agent gives the potential buyer a copy of whichever of the following was given to the seller—
  - (a) the comparative market analysis for the offered property;
  - (b) the written explanation showing how the property agent decided the market value of the property.

Maximum penalty—540 penalty units.

- (5) In this section—

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*comparative market analysis*, for offered property, see section section 235.

**239 Chief executive’s power to ask for substantiation of representations made by licensees or property agent salespersons**

- (1) This section applies if the chief executive believes, on reasonable grounds, that a licensee or property agent salesperson has made a representation in contravention of section 234(1) or (2).
- (2) The chief executive may, by written notice, ask the person to give to the chief executive written proof that supports the representation.
- (3) The notice must—
  - (a) state a day, at least 14 days after the day the notice is given to the person, by which the person must give the proof to the chief executive; and
  - (b) warn the person it is an offence to fail to comply with the notice by the stated day, unless the person has a reasonable excuse for the failure to respond.
- (4) The person must comply with the notice by the stated day, unless the person has a reasonable excuse for the failure to comply.  
Maximum penalty—100 penalty units.
- (5) It is a reasonable excuse to fail to comply with subsection (4) if complying with the subsection would tend to incriminate the person.

**240 Chief executive to ask for substantiation of representations made by marketeers**

- (1) This section applies if the chief executive believes, on reasonable grounds, that a marketeer has made a representation in contravention of section 228(1) or (2).

[s 241]

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- (2) The chief executive may, by written notice, ask the person to give to the chief executive written proof that supports the representation.
- (3) The notice must—
  - (a) state a day, at least 14 days after the day the notice is given to the person, by which the person must give the proof to the chief executive; and
  - (b) warn the person it is an offence to fail to comply with the notice by the stated day, unless the person has a reasonable excuse for the failure to comply.
- (4) The person must comply with the notice by the stated day, unless the person has a reasonable excuse for the failure to comply.  
Maximum penalty—540 penalty units.
- (5) It is a reasonable excuse to fail to comply with subsection (4) if complying with the subsection would tend to incriminate the person.

**241 Offence to charge fee for providing documents etc.**

- (1) A licensee or a licensee's employee must not charge a fee for the provision, preparation or completion of a document for a transaction relating to, or arising out of, the performance of a licensee's activities.  
Maximum penalty—200 penalty units or 1 year's imprisonment.
- (2) Subsection (1) does not limit the *Legal Profession Act 2007*, section 24 or 25.

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

- (1) If an amount is prescribed under a regulation as the maximum amount allowed to a licensee for the performance of a licensee's activities in relation to a stated transaction, a licensee must not ask for, or receive, a commission or reward

for the transaction greater than the amount allowed under the regulation.

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

- (2) If, in a proceeding under subsection (1), an amount is alleged to be payable to the licensee for recouping expenditure lawfully incurred by the licensee in connection with the transaction, the licensee must establish to the court’s satisfaction, on the balance of probabilities, that the expenditure was lawfully incurred.
- (3) If a licensee is convicted of an offence against subsection (1) or fails to satisfy the court under subsection (2) about expenditure incurred, the convicting court must also order the licensee to refund the amount to which the licensee was not entitled to the person from whom it was obtained.
- (4) Subsection (1) does not prevent the licensee asking for or receiving an amount more than the maximum amount allowed under the regulation if the amount is for GST payable for a supply in relation to the transaction.

**243 Offence to lend or borrow licence**

- (1) A licensee must not—
  - (a) lend or hire out the licensee’s licence to someone else; or
  - (b) notify or advertise that a licence is available for sale, loan or hire, or on another basis, to someone else, whether licensed or not; or
  - (c) permit or allow someone else to hold out that the person is the holder of the licence issued to the licensee.

Maximum penalty—200 penalty units or 2 years imprisonment.

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

Maximum penalty—200 penalty units or 2 years imprisonment.

[s 244]

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

**244 False or misleading statements**

- (1) A person must not, for this Act, state anything to an official the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) In this section—

*official* means—

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

**245 False or misleading documents**

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

Maximum penalty—200 penalty units or 2 years imprisonment.

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

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

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

Maximum penalty—200 penalty units or 2 years imprisonment.

- (4) In this section—

*official* means—

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

**246 Prohibited practices**

- (1) A person must not, for reward, supply, or undertake to supply, or advertise, or hold out in any way, that the person will supply to any person addresses or other particulars of—

- (a) places of residence that are to let; or
- (b) places of residence or land or interests in places of residence or land that are for sale.

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

- (2) Subsection (1) does not apply to a property agent that has been appointed by the landlords or sellers of the places of residence or land or interests in the places of residence or land to perform an activity and has the landlord's or seller's consent to supply the particulars.

- (3) A person must not make an unsolicited invitation to another person to attend a property information session unless the person is a property developer or a property agent or someone acting for the developer or agent.

Maximum penalty—200 penalty units or 2 years imprisonment.

## **Division 2                    Evidentiary matters**

### **247    Evidentiary provisions**

- (1) This section applies to a proceeding under this Act.
- (2) A signature purporting to be the signature of the chief executive or an inspector is evidence of the signature it purports to be.
- (3) A certificate purporting to be signed by the chief executive, a member of QCAT, the registrar or an inspector stating any of the following matters is evidence of the matter—
  - (a) a stated document is—
    - (i) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or
    - (ii) a notice, or a copy of a notice, given under this Act; or
    - (iii) a record, or a copy of a record, kept under this Act; or
    - (iv) a document, or a copy of a document, kept under this Act;
  - (b) on a stated day, a stated person—
    - (i) was, or was not, the holder of a stated licence or registration certificate under this Act; or
    - (ii) was given a stated notice, order, requirement or direction under this Act.

### **248    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

### 249      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—



[s 250]

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- (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.

**250 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.

**251 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.

[s 252]

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- (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.

**252 Power of court**

- (1) A court may, in addition to any other penalty it may impose, order that a licensee's licence or a property agent salesperson's registration certificate be suspended for a stated period or cancelled if the licensee or property agent salesperson has been convicted of an offence against this Act.
- (2) The court may also order that a person convicted of an offence against this Act be disqualified from holding a licence 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.
- (5) This section does not apply to an offence against section 223(6), 233(1) or 240(4).

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**253 Power of court for particular offences**

- (1) A court may, in addition to any other penalty it may impose on a person convicted of an offence against section 223(6), 233(1) or 240(4), order that—
  - (a) if the person is a licensee or a property agent salesperson—
    - (i) the licensee’s licence or property agent salesperson’s registration certificate be suspended for a stated period or cancelled; or
    - (ii) the person be disqualified from holding a licence or registration certificate under this Act for a stated period or permanently; or
  - (b) whether or not the person is a licensee or a property agent salesperson—the person be disqualified from holding a licence or registration certificate under this Act for a stated period or permanently.
- (2) The court may also make any other order QCAT may make in a marketeer proceeding.

*Editor’s note—*

For the orders QCAT may make, see section 209 (Orders QCAT may make in a marketeer proceeding).
- (3) However, if the court makes an order for compensation, the court may order the payment of an amount up to the limit of the court’s civil jurisdiction.
- (4) The court may make an order under this section—
  - (a) on the chief executive’s application; or
  - (b) on its own initiative.
- (5) If an order is made by a court under this section on the court’s own initiative, the court must cause a copy of the order to be given to the chief executive.

[s 254]

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**254 Allegations of false or misleading representations or statements etc.**

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

**Part 13 General**

**255 Public warning statements**

- (1) The Minister or chief executive may make or issue a public statement identifying and giving warnings or information about any of the following—
  - (a) contraventions of a code of conduct that have resulted in disciplinary action and persons who commit the contraventions;
  - (b) business practices regulated under this Act that are unfair and persons who engage in the unfair practices;
  - (c) the commission of offences against this Act, or the Administration Act, and persons who commit the offences.
- (2) The statement may identify particular contraventions, business practices, offences and persons.
- (3) The Minister or chief executive must not make or issue a statement under this section unless satisfied that it is in the public interest to do so.

**256 Civil remedies not affected**

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

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**257 Criminal Proceeds Confiscation Act 2002 not limited**

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

**258 Delegation—chief executive**

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

(2) In subsection (1)—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

the level at which a person is employed within the department

**259 Approved forms**

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

**260 Review of Act**

(1) The Minister must ensure the operation of this Act is reviewed.

(2) The review must be finished within 3 years after the commencement of this section.

(3) The Minister must table in the Legislative Assembly a report on the outcome of the review as soon as practicable after the review is finished.

**261 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may be made about the following—

[s 262]

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

## **Part 14                      Repeal**

### **262      Repeal**

The Property Agents and Motor Dealers Act 2000, No. 62 is repealed.

## **Part 15                      Transitional provisions**

### **263      Definitions for pt 15**

In this part—

*commencement* means commencement of this section.

*existing licence* means any of the following licences issued under the repealed Act—

- (a) an auctioneer’s licence;
- (b) a pastoral house licence;
- (c) a pastoral house auctioneer’s licence;
- (d) a pastoral house director’s licence;
- (e) a pastoral house manager’s licence;
- (f) a real estate agent’s licence;
- (g) a resident letting agent’s licence.

*existing registration certificate* means a registration certificate as a real estate salesperson, pastoral house salesperson, property developer salesperson or trainee auctioneer.

**264 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) if the existing licence was a pastoral house or pastoral house director’s licence—a property agent’s licence and a chattel auctioneer licence; or
  - (b) if the existing licence was a real estate agent’s licence or pastoral house manager’s licence and the person also held an existing licence that was an auctioneer’s licence immediately before the commencement—a property agent’s licence and a chattel auctioneer licence; or
  - (c) if the existing licence was a real estate agent’s licence or pastoral house manager’s licence and the person did not hold an existing licence that was an auctioneer’s licence immediately before the commencement—a property agent’s licence that is on the condition that the activities



[s 264]

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authorised to be performed under the licence do not include the sale, attempted sale or offering for sale or resale, of any property by way of auction; or

- (d) if the existing licence was an auctioneer's licence or a pastoral house auctioneer's licence—
  - (i) either—
    - (A) if the person also held an existing licence that was a real estate agent's licence immediately before the commencement—a property agent's licence; or
    - (B) if the person did not hold an existing licence that was a real estate agent's licence immediately before the commencement—a property agent's licence that is on the condition that the activities authorised to be performed under the licence are limited to the sale, attempted sale or offering for sale or resale of any property by way of auction; and
  - (ii) a chattel auctioneer licence; or
- (e) if the existing licence was a resident letting agent's licence—a resident letting agent's 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 transitioned licence under section 58

- (6) In this section—

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*transitioned licence* means a licence mentioned in subsection (2)(a), (b), (c), (d) or (e) that is not an existing licence.

**265 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) if the existing registration certificate was held as a real estate salesperson or pastoral house salesperson and the person also held an existing registration certificate as a trainee auctioneer immediately before the commencement—a registration certificate as a property agent salesperson and a registration certificate as a trainee chattel auctioneer; or
  - (b) if the existing registration certificate was held as a real estate salesperson or pastoral house salesperson and the person did not hold an existing registration certificate as a trainee auctioneer immediately before the commencement—a registration certificate as a property agent salesperson that is on the condition that the activities authorised to be performed under the licence do not include the sale, attempted sale or offering for sale or resale of any property by way of auction; or
  - (c) if the existing registration certificate was held as a trainee auctioneer—
    - (i) either—
      - (A) if the person also held an existing registration certificate as a real estate agent salesperson immediately before the commencement—a registration certificate as a property agent salesperson; or
      - (B) if the person did not hold an existing registration certificate as a real estate agent

[s 265]

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salesperson immediately before the commencement—a registration certificate as a property agent salesperson that is on the condition that the activities authorised to be performed under the licence are limited to the sale, attempted sale or offering for sale or resale of any property by way of auction; and

- (ii) a registration certificate as a trainee chattel auctioneer; or
  - (d) if the existing registration certificate was held as a property developer salesperson—a registration certificate as a property agent salesperson that is on the condition that the activities authorised to be performed under the licence do not include the sale, attempted sale or offering for sale or resale of any property by way of auction.
- (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 148

- (6) In this section—

*transitioned registration certificate* means a registration certificate mentioned in subsection (2)(a), (b), (c) or (d) that is not an existing registration certificate.

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**266 Expiry of particular licences and certificate**

On the commencement, the following licences, or certificate, under the repealed Act ends—

- (a) a property developer licence;
- (b) a property developer director's licence;
- (c) a registration certificate as a property developer salesperson.

**267 Existing applications**

- (1) This section applies to the following applications made under the repealed Act but not decided before the commencement—
  - (a) an application for the issue of an existing licence or existing registration certificate;
  - (b) an application for the renewal of an existing licence or existing registration certificate;
  - (c) an application for the restoration of an existing licence or existing registration certificate;
  - (d) an application about appointing a nominated person mentioned in section 64(3) or 65(4) of the repealed Act as a licensee's substitute licensee;
  - (e) an application about amending an existing licence or existing registration certificate.
- (2) The application must be decided under this Act, and the provisions of this Act, relevant to the application, apply to the application.
- (3) However, the provisions of this Act dealing with making the application in the approved form and paying the application fee do not apply to the application.
- (4) If the application is about the issue, renewal or restoration of an existing licence, the application is taken to be about the issue, renewal or restoration of the transitioned licence for the existing licence.

[s 268]

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

**268 Restoration of expired existing licences**

- (1) This section applies if a person's existing licence expired not earlier than 3 months before the commencement.
- (2) The person may apply under section 49 for restoration of the licence as if the existing licence were a licence.

*Note—*

Section 49(2)(a) requires that an application for restoration be made within 3 months after the expiry.

- (3) However, if the chief executive decides to grant the application, the chief executive must, instead of restoring the existing licence, issue to the person the licence that would be the transitioned licence for the existing licence if the existing

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licence were to be held immediately before the commencement.

- (4) If the existing licence was subject to a condition, the licence issued under subsection (3) is also taken to be subject to a condition in the same terms, so far as practicable, as that condition.
- (5) To remove any doubt, it is declared that section 51 applies to the existing licence.

**269 Restoration of expired registration certificates**

- (1) This section applies if a person's existing registration certificate expired not earlier than 3 months before the commencement.
- (2) The person may apply under this Act, section 144 for restoration of the existing registration certificate as if the existing registration certificate were a property agent saleperson's registration certificate.

*Note—*

Section 144(2)(a) requires that an application for restoration be made within 3 months after the expiry.

- (3) However, if the chief executive decides to grant the application, the chief executive must, instead of restoring the existing registration certificate, issue to the person the registration certificate that would be the transitioned registration certificate for the existing registration certificate if the existing registration certificate were to be held immediately before the commencement.
- (4) If the existing registration certificate was subject to a condition, the registration certificate issued under subsection (3) is also taken to be subject to a condition in the same terms, so far as practicable, as that condition.
- (5) To remove any doubt, it is declared that section 146 applies to the existing licence.

[s 270]

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**270 Previous refusals of applications**

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

**271 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 61 applies to the licence as if the licence were a licence deactivated under this Act.
- (3) A request to deactivate an existing licence, made under the repealed Act and not decided before the commencement, must be decided under this Act and section 61 applies to the request.

**272 Suspended existing licences and existing registration certificates**

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

**273 Existing appointments**

- (1) An engagement or appointment or an agreement to act as a particular agent under the repealed Act that is in force immediately before the commencement and complies with the repealed Act (*existing appointment*), continues to be a valid appointment under this Act according to its terms.
- (2) However,
  - (a) if the existing appointment was as a pastoral house or pastoral house director—the existing appointment is taken to be as a property agent and a chattel auctioneer; or



[s 273]

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- (b) if the existing appointment was as a real estate agent or pastoral house manager and the appointee also held an existing licence that was an auctioneer's licence immediately before the commencement—the existing appointment is taken to be as a property agent and a chattel auctioneer; or
  - (c) if the existing appointment was as a real estate agent or pastoral house manager and the person did not hold an existing licence that was an auctioneer's licence immediately before the commencement—the existing appointment is taken to be as a property agent on the condition that the activities authorised to be performed under the licence do not include the sale, attempted sale or offering for sale or resale, of any property by way of auction; or
  - (d) if the existing appointment was as an auctioneer or a pastoral house auctioneer—the existing appointment is taken to be as—
    - (i) either—
      - (A) if the person also held an existing licence that was a real estate agent's licence immediately before the commencement—a property agent; or
      - (B) if the person did not hold an existing licence that was a real estate agent's licence immediately before the commencement—a property agent on the condition that the activities authorised to be performed under the licence are limited to the sale, attempted sale or offering for sale or resale, of any property by way of auction; and
    - (ii) a chattel auctioneer.
- (3) Also, if the engagement, appointment or agreement is for a sole agency within the meaning of the repealed Act, the engagement, appointment or agreement ends on the earlier of the following days—

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

**274 Disciplinary action relating to pre-commencement conduct**

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

**275 Marketeer proceeding relating to pre-commencement conduct**

- (1) If, before the commencement, a ground existed for starting a marketer proceeding against a person under the repealed Act, a marketer proceeding may be taken against the person on that ground under the repealed Act as if that Act had not been repealed.

[s 276]

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- (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.

**276 Continuation of reviews under the repealed Act**

- (1) Subsection (2) applies if—
  - (a) a person applied to QCAT, under section 197 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 197 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.

**277 Injunctions relating to pre-commencement conduct**

- (1) An injunction granted by the District Court under the repealed Act continues to be a valid injunction under this Act according to its terms.
- (2) However—
  - (a) if the injunction relates to an existing licence, from the commencement, the injunction operates in relation to the transitioned licence for the existing licence; or
  - (b) if the injunction relates to an existing registration certificate, from the commencement, the injunction

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operates in relation to the transitioned registration certificate for the existing registration certificate.

- (3) The provisions of this Act relating to injunctions apply to an injunction continued under subsection (1).
- (4) In addition to section 214, 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.

**278 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) However—
  - (a) if the undertaking relates to an existing licence, from the commencement, the undertaking operates in relation to the transitioned licence for the existing licence; or
  - (b) if the undertaking relates to an existing registration certificate, from the commencement, the undertaking

[s 279]

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operates in relation to the transitioned registration certificate for the existing registration certificate.

- (3) The provisions of this Act relating to undertakings apply to an undertaking continued under subsection (1).
- (4) Section 218 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.
- (5) If, before the commencement, the chief executive applied to the District Court for an order under section 571 of the repealed Act and the District Court has not decided the application, the application may be heard under the repealed Act as if that Act had not been repealed.
- (6) If the chief executive could have applied to the District Court for an order under section 571 of the repealed Act but had not applied before the commencement, the chief executive may apply to the District Court for an order under that section under the repealed Act as if that Act had not been repealed.

#### **279 Proceedings for offences under the repealed Act**

- (1) This section applies if a person is alleged to have committed an offence against any of the following provisions of the repealed Act before the commencement—
  - (a) chapter 2, parts 9, 10 or 11;
  - (b) chapter 3, parts 9, 10 or 11;
  - (c) chapter 4, parts 2, 3 or 4;
  - (d) chapter 5, 6, 7, 8, 11 or 12;
  - (e) chapter 14, part 2;
  - (f) chapter 15;
  - (g) chapter 16, part 3;
  - (h) chapter 17, parts 1 and 3.
- (2) Despite the Criminal Code, section 11, proceedings for the offence may be started or continued, and the court may hear

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and decide the proceedings, as if the repealed Act had not been repealed.

**280 Existing infringement notice offences**

- (1) This section applies if—
  - (a) an infringement notice offence under the *State Penalties Enforcement Act 1999* was committed by a person before the commencement; and
  - (b) no infringement notice under that Act had been served before the commencement on the person for the offence.
- (2) Despite the Criminal Code, section 11, an infringement notice may be served on the person and the infringement notice may be dealt with as if the repealed Act had not been repealed.

**281 Existing inspectors and delegates**

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

**282 Reference committee—marketeers**

- (1) If a reference committee has been formed under section 528AA of the repealed Act and is still current immediately before the commencement, each appointment to the reference committee as a community representative continues under this Act for the unexpired term of the appointment.
- (2) If the appointment was subject to a condition, the person appointed is taken to be subject to a condition in the same terms.
- (3) If, under section 528AC of the repealed Act, the reference committee has authorised the chief executive to make an

[s 283]

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application to QCAT for a public examination under chapter 14, part 5, division 8 of the repealed Act, the authorisation continues under this Act.

**283 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 572.

**284 Existing fines and fees**

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

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**Schedule 1      Decisions subject to review**

section 197

- section 25(2)      (Chief executive must consider suitability of applicants and licensees)
- section 38(1)      (Chief executive may issue or refuse to issue licence)
- section 42(1)      (Licence—conditions)
- section 47(1)      (Chief executive may renew or refuse to renew licence)
- section 50(1)      (Chief executive may restore or refuse to restore licence)
- section 55(1)      (Chief executive may appoint or refuse to appoint substitute licensee)
- section 58(1)      (Amendment of licence conditions)
- section 62(2)      (Immediate suspension)
- section 133(2)      (Chief executive must consider suitability of applicants)
- section 139(1)      (Chief executive may issue or refuse to issue registration certificate)
- section 140(1)      (Registration certificate—conditions)
- section 142(1)      (Chief executive may renew or refuse to renew registration certificate)
- section 145(1)      (Chief executive may restore or refuse to restore registration certificate)
- section 148(1)      (Amendment of registration certificate conditions)
- section 151(2)      (Immediate suspension)



## Schedule 2 Dictionary

### section 9

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

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

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

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

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

***Agents Act*** means—

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

***application for review*** see section 197.

***approved form*** see section 259.

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

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**associate**, of a person, means—

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

**attached**, for part 6, see section 159.

**attendance notice** means an attendance notice issued under this Act.

**audit period** see the Administration Act, schedule 2.

**audit report** see the Administration Act, schedule 2.

**beneficial interest**, other than for section 38(6)(b)(i), see section 9.

**benefit**, for part 6, see section 159.

**body corporate** means—

- (a) a body corporate under the *Building Units and Group Titles Act 1980*; or
- (b) a body corporate for a leasehold building units plan under the *South Bank Corporation Act 1989*; or
- (c) a body corporate under the *Body Corporate and Community Management Act 1997*.

**Building Act**, for part 6, division 5, see section 175.

**building complex** means—

- (a) a building on a single building units plan under the *Building Units and Group Titles Act 1980*; or
- (b) a building or buildings on a single group titles plan under the *Building Units and Group Titles Act 1980*; or
- (c) a building or buildings shown on a single leasehold building units plan under the *South Bank Corporation Act 1989*; or
- (d) a building or buildings on scheme land in a single community titles scheme or a layered arrangement of community title schemes under the *Body Corporate and Community Management Act 1997*.

[s 284]

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**business address**, of a licensee, see section 19(1)(b).

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

**business day** for part 6, see section 159.

**business of letting** includes the collecting or receiving of rents by an agent for a principal, whether or not the agent has let the place of residence, land, estate or business concerned.

**buyer**, for part 6, see section 159.

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

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

**chattel auctioneer licence** means a chattel auctioneer licence under the *Motor Dealers and Chattel Auctioneers Act 2010*.

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

**code of conduct** means a code of conduct under section 118.

**commencement**, for part 15, see section 263.

**commissioner for fair trading** means the commissioner for fair trading under the *Fair Trading Act 1989*.

**comparable certificate** means a certificate of registration as any of the following—

- (a) real estate agent salesperson;
- (b) pastoral house salesperson;
- (c) property developer salesperson;
- (d) trainee auctioneer.

**comparable licence**—

- (a) for a property agent licence means any of the following licences—
  - (i) real estate agent’s licence;
  - (ii) pastoral house auctioneer’s licence;
  - (iii) pastoral house licence;
  - (iv) pastoral house director’s licence;
  - (v) pastoral house manager’s licence;
  - (vi) auctioneer’s licence; or
- (b) for a resident letting agent licence, means a resident letting agent licence.

**complaint**, for a marketeer proceeding, for part 8, see section 186.

**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.

**cooling-off period**, for part 6, see section 159.

**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—

[s 284]

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- (a) generally for an applicant or licensee—section 29(2); or
- (b) for an applicant for, or for the renewal or restoration of, registration as a property agent salesperson—section 135(2).

*current sustainability declaration*, for part 6, division 5, see section 176.

*electronic communication*, for part 6, see section 159.

*employ* includes engage on a contract for services or commission and use the services of, whether or not for reward.

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

*employment register*—

- (a) of a resident letting agent, see section 123(1); or
- (b) of a property agent, see section 103(1).

*exclusive agency* see section 14.

*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 15, see section 263.

*existing registration certificate*, for part 15, see section 263.

*financial loss*, for part 8 and part 10, division 5, subdivision 4, see section 186.

*formed on a sale by auction*, for part 6, see section 159.

*former licensee*—

- (a) generally, means a person who held a licence under this or the repealed Act; and
- (b) for part 9, see section 191.

*former registered employee*, for part 9, see section 191.

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

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

**holder—**

- (a) of a property agent's licence, means the person in whose name the licence is issued; or
- (b) of a registration certificate as a property agent salesperson, means the person in whose name the certificate is issued.

**in charge** see section 10.

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

**information sheet**, for part 6, see section 159.

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

**land** includes—

- (a) a lot or proposed lot under the *Land Title Act 1994*; and
- (b) a lot shown on a leasehold building units plan registered or to be registered under the *South Bank Corporation Act 1989*; and
- (c) land under the *South Bank Corporation Act 1989*; and
- (d) an interest in land.

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

**letting** includes every form of leasing or letting of places of residence, land, estates, or businesses.

**licence** means a property agent's licence or a resident letting agent's licence.

**licence register** see section 68(1).

[s 284]

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

**licensee** means the holder of a property agent's licence, or a resident letting agent's licence, that is in force.

**market**, residential property, means take action to sell the property, other than by appointing a real estate agent, pastoral house or auctioneer to sell the property.

**marketeer**—

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

a service in connection with the sale, of residential property.

**marketeering contravention**, for part 8, see section 186.

**marketeer proceeding** see section 195.

**misleading** includes deceptive.

**non-investment residential property**, for part 8, see section 187.

**obtain**, for part 3, division 5, see section 87.

**open listing** see section 11(1).

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

**part payment** see section 173.

**place of residence**—

(a) means—

- (i) a building or part of a building used, or currently designed for use, as a single dwelling only; and
- (ii) any outbuildings or other appurtenances incidental to the use of the building or part as a single dwelling; but

(b) does not include—

- (i) a building or part of a building used, or currently designed for use, for temporary accommodation; or
- (ii) any outbuildings or other appurtenances incidental to the use of the building or part as temporary accommodation.

*Examples of paragraph (b)—*

- motel
- caravan park
- hostel



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

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

***property agent*** see section 70(1).

***property agent's licence*** means a property agent's licence (real estate agent and auctioneer).

***property agent's licence (real estate agent and auctioneer)*** means a property agent's licence (real estate agent and auctioneer) issued under this Act.

***property agent salesperson*** means a person who has obtained registration as a property agent salesperson under this Act.

***property developer*** means—

- (a) a person who completes more than 6 residential property sales in any 1 year period; or
- (b) markets residential property in which the person has an interest of at least 15%.

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

***provider*** see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

***public examination*** means a public examination conducted under part 10, division 5, subdivision 2.

***publish***, for part 6, division 5, see section 176.

***reference committee*** means the reference committee established under section 200.

***registered office***—

- (a) of a resident letting agent, see section 120; or

(b) of a property agent, see section 100.

**registrar** means the principal registrar under the QCAT Act.

**registration certificate** means a registration certificate issued under section 139.

**registration certificate register** see section 156(1).

**relevant advertisement**, for part 6, division 5, see section 176.

**relevant audit period** —

- (a) for a licensee's licence, means the audit period ending immediately before the licence's expiry date; or
- (b) for a former licensee's licence, means the audit period ending immediately before the former licence's expiry date.

**relevant contract**, for part 6, see section 159.

**relevant person**, for part 8, see section 186.

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

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

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

**residential dwelling**, for part 6, division 5, see section 176.

**residential property** see section 12.

**resident letting agent** see section 113(1).

**resident letting agent's licence** means a resident letting agent's licence issued under this Act.

**resident letting agent's business** see section 96.

**respondent**, for section 212, see section 213.

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

**rooming accommodation** see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

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

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

**seller**, for part 6, see section 159.

**seller's agent**, for part 6, division 5, see section 177(1).

**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.

**sole agency** see section 14.

**termination penalty**, for part 6, see section 159.

**trainee chattel auctioneer** means a trainee chattel auctioneer under the *Motor Dealers and Chattel Auctioneers Act 2010*.

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

**trust money** see the Administration Act, schedule 2.

**trust property** see the Administration Act, schedule 2.

**unit sale**, for part 6, see section 159.

**unsolicited invitation** see section 13.

Property Agents Bill 2010

Part 15 Transitional provisions

[s 284]

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*vacant land*, for part 3, division 2, subdivision 6, see section 91.

*warning statement*, for part 6, see section 159.